MIRAMICHI BAY COMMUNITY RELATIONS
PANEL

BUILDING BRIDGES
MIRAMICHI FISHING COMMUNITIES AT A CROSSROAD

Chief Roger J. Augustine (Ret)

Mr. Justice Guy A. Richard

102-04645/

MIRAMICHI BAY COMMUNITY RELATIONS PANEL
DES RELATIONS COMMUNAUTAIRES DE LA BAIE MIRAMICHI
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The Honorable Robert Thibault, Minister
Department of Fisheries and Oceans Canada
200 Kent Street
Ottawa, Ontario
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Miramichi N.B.
March 15, 2002

Subject: Report of the Miramichi Bay Community Relations Panel

Honorable Mr. Minister,

The Panel is pleased to submit its report on the situation in the Miramichi Bay area pursuant to the events involving non-Native lobster fisher communities and the Burnt Church Mi'kmaq community subsequent to the Marshall rulings.

We were asked to listen to the concerns and the needs of the communities, to report our findings and present recommendations. Our mandate came at a critical time. Each community welcomed the opportunity to tell its side of the story. They came before us as individuals, in informal groups of concerned citizens, and as representative of formal organizations. Our report faithfully reflects their views and tells a compelling story. Hopefully the Honorable Minister will find time to read the full report to fathom the mood of the communities.

Two main themes emerge from the representations of the more than 150 individuals and some 13 groups we met. The first is the deep-seated resolve of communities on both sides of the issue to strongly defend their positions. The First Nations Peoples are determined to see their ancestral and treaty rights respected and the non-Native communities are insistent that their traditional fishing rights and the livelihood it has provided their communities for generations also be respected. The second theme is the yearning on both sides for a return to the social peace they enjoyed prior to the Marshall rulings.

We respectfully submit that factoring the views of all concerned into the resolution of the conflict will require that your Department take a fresh approach to its fisheries management mandate in the Miramichi Bay area.

We would welcome the opportunity to discuss our findings at your convenience.

We remain respectfully yours,

Chief Roger J. Augustine (Ret.)

Mr. Justice Guy Richard

EXECUTIVE SUMMARY

The Panel on Community Relations was given the following mandate in mid- January and was asked to report by March 15, 2002.

MANDATE:

- **Assess the current community relationships in Aboriginal and non-Aboriginal communities in the Miramichi Bay area.**
- **Discuss the situation with private citizens and community leaders and community members.**
- **Provide a consultation report to the Minister of Fisheries and Oceans regarding the current state of affairs and dealing with approaches for communities and governments to encourage Aboriginal and non-Aboriginal communities to work toward common purposes.**

We adopted a proactive approach to our mandate. We sent letters (bilingual) to every licensed fisher in the area inviting them to talk with us and giving them a full description of the mandate. We had a secretariat phoning individuals and encouraging them to meet the Panel. The results exceeded our expectations. More than one hundred and fifty individuals and groups answered our call.

We had the privilege of listening to the views of citizens, fishers and women groups in both communities. We also heard from First Nations elders and law enforcement officers, RCMP officers, DFO personnel, representatives from the Miramichi Chamber of Commerce and the local members of parliament and provincial legislature, and municipal councils in the region.

The general conclusion of our meeting is that the problem runs much deeper than lobster fishing and conservation. The current DFO strategy for dealing with those issues unfortunately will strike at the heart of the communities' way of life and, equally important, will seriously affect the livelihood of individuals and families as well as their communities. This is true on both sides of the dispute. It is not surprising that emotions run deep.

ONE CONFLICT, TWO RATIONALES

The most difficult hurdle to overcome in the search of acceptable solutions is the existence of two unrelated agendas driving the opposing groups. The non-native communities view the situation strictly as a fisheries management problem. They are concerned that their livelihood will be threatened if a second fishing season is introduced in Lobster Fishing Area (LFA) 23. Over time and with effective enforcement measures, they learned that conservation pays. Lobster is now the principal source of income for professional fishers in this district. Other species round out what most would call a "moderate living". For them, **conservation means a ban on lobster fall fishing, in the Miramichi area**.

The authorities of Burnt Church First Nations are working to a different agenda. The Sparrow and Marshall rulings are being used as strategic bargaining tools to gain the maximum political autonomy possible. The Management Plan, submitted by the Esgenoôpetitj First Nation (Burnt Church), is predicated on their rights as a sovereign nation. In the grand scheme of Aboriginal political strategy within Canada, the situation in Burnt Church is just another skirmish. Collateral damages and even

human casualties may be perceived as an unfortunate by-product of nation building.

Thus, on the one hand, francophone and anglophone fishers are not willing to jeopardize the resource to accommodate righting of past wrongs done to the First Nations people no matter how understanding they may seem. Non-Native fishers generally don't feel individually and personally responsible for the actions of Canadian authorities over the years. The most they are willing to concede is that Native fishers, who have a license to fish, are welcomed to do so on the same terms as they enjoy. To that end, they understand the need for a buy back program even though it will impact their communities.

On the other hand, it appears certain that no lasting agreement can be reached without the active participation of the First Nations people of Burnt Church. But equally important, solutions that don't deal with the overall socio-economic situation on the Burnt Church Reserve will do little to bring about lasting benefits to that community.

We conducted a detailed socio-economic analysis using census 1996 data. Three key differences between the Burnt Church Mi'kmaq community and the neighboring community of Néguac immerged. First there is a rapid population expansion in the First Nations community. The under 25 age-group accounts for 52% of the population while in neighboring communities, that group represents only 34% of the population. Second, in the Burnt Church Mi'kmaq community 5% have high-school education. In neighboring Néguac, 11% of the population has a high-school education. Thirdly, the life expectancy of people living on the Reserve is dramatically different. Only 3% of the population live past

sixty-five in the First Nations community of Burnt Church in comparison to 13% in neighboring non- native communities.

The Panel believes that lasting social peace can only be achieved by initiating actions that will eliminate those disparities in the long run.

The socio-economic analysis also revealed one surprising similarity. We compared the earnings of communities in the Northumberland county and discovered that, when using a Purchasing Power Parity adjustment to account for differential tax treatment, the Burnt Church Mi'kmaq community and their Néguac neighbors were much closer, economically speaking, than the unadjusted earnings statistics indicated. Of course, both communities earn a borderline living considering that the amount they receive in transfer payment ranges between 21% and 40%. The hardship shared by those communities should be grounds for a cooperative approach to dealing with their current conflict. They really cannot afford the economic losses they have experienced during the past two conflicts.

On a more human scale, they also could not afford the human tragedy of the loss of life, which they narrowly and luckily averted in the Fall of 2000 and 2001. On this score, the communities are unanimous. Despite other grievances, they are desperate for a return to social peace.

Another area where the communities are unanimous is in their distrust of government initiatives designed to bring the First Nations people into the fishing industry. The lack of community consultation and effective communication has resulted in a loss of credibility of government action on both sides of the issue.

The Department of Fisheries and Oceans Canada played a lead role in the events leading to and during the periods of civil unrest. However, our analysis revealed that the root cause of the unrest extent much beyond the management of lobster fishery. It involves social and economic development issues that are beyond DFO's mandate and concerns other agencies of federal and provincial governments. Yet, DFO has become the lightening rod for community criticisms.

Nevertheless, it is urgent that DFO refocus its negotiating strategy with the Burnt Church Mi'kmaq community. Science is on the side of the non-native fishers on the conservation issue, so are the courts, which have made conservation and the impact on other communities sharing the resource key considerations in working out agreements. If that were not enough, the virtual certainty of further social unrest should be sufficient to bring about a change in course. It would be unfortunate, if administrative expediency resulted in the criminalization of whole communities of normally law-abiding citizens.

The Panel was expressly precluded from addressing the question of Treaty Rights. Our search for solutions was conducted in accordance with the following key assumptions:

1. **The Panel's search for feasible solution is predicated on the primacy of the current legal framework.**
2. **The corollary assumption is that the laws of the land should apply to all its citizens equally, regardless of their status in life.**
3. **Another major assumption is that no agreement should be entered into without the knowledge of all stakeholders.**

The Panel firmly believes that the situation has been allowed to deteriorate to the point where there is an urgent need to wipe the slate

clean in order to allow for a fresh start. That is why we have chosen to deal with community issues before we specifically address the fisheries management issues. The first six recommendations focus on the needs of the communities while the remaining six deal with fishing related issues.

Initiating a community healing process is vital to wiping the slate clean. The Panel offers the following recommendations:

RECOMMENDATION 1: FORGIVENESS

The Panel recommends that all pending charges arising from the troubles in the Miramichi Bay fisheries conflict since the Marshall rulings should be stayed for a period of two years and, provided the accused show good behavior during that period, the charges should be withdrawn.

RECOMMENDATION 2: COMPENSATION

The Panel recommends that a program be instituted immediately to compensate for the material losses sustained to boats and fishing gears during the confrontations of 2000 and 2001 in the Miramichi Bay area.

RECOMMENDATION 3: REPARATION

The Panel recommends the immediate implementation of a displaced fisher-helper compensation program. As part of this recommendation, the government:

- **Should initiate the program quickly by completing a list of beneficiaries by the end of May 2002.**
- **Should advise the beneficiaries of their eligibility and inform them of the basis that will be used to establish the amount of the compensation;**

- **Should compensate the fisher helpers as soon as their employment records have been ascertained.**

RECOMMENDATION 4: EDUCATION

The Panel recommends the establishment of a Community Renewal Project to be managed by a special Task Force regrouping relevant expertise seconded by the key service providers and funded separately. Its mandate will be to build a model First Nations community on the Burnt Church Mi'kmaq reserve within ten years. In order to fulfil its mandate the Task force must develop the appropriate intellectual capacity before implementing each of the following components:

- **Develop a primary school program in the Mi'kmaq language with qualified Mi'kmaq speaking teachers;**
- **Build a health, social and family support system staffed by qualified Mi'kmaq speaking care givers:**
- **Up grade the physical infrastructure of the reserve to Canadian standards;**

RECOMMENDATION 5: FIRST NATIONS LAW ENFORCEMENT

The Panel recommends the establishment of a First Nation law enforcement academy and the training of an autonomous First Nations police force.

RECOMMENDATION 6: FIRST NATIONS COMPLAINT MECHANISM

The Panel supports the notion of an aboriginal ombudsman office as a way of providing a complaint mechanism for First Nations people who currently feel aggrieved by the actions of their Band Council.

The next set of six recommendations develops a comprehensive approach to fisheries management in the Miramichi Bay area.

RECOMMENDATION 7: WHARF FACILITIES

The existing Burnt Church wharf facilities should be rehabilitated. We recommend:

- **that the existing Burnt Church wharf be upgraded and expanded to accommodate the increasing fleet of First Nations fishers;**
- **that Burnt Church First Nations fishing community be invited to appoint members to the port authorities to take part in the shared responsibility of managing the facility for the benefit of both communities and**
- **that the responsibility for the project come under the purview of the Task Force.**

The Panel concludes that preventing commercial fall fishing in Miramichi Bay is the only reasonable course of action at this time. This is based on the necessity to subsume management practices to the conservation imperative. It is consistent with the available scientific knowledge supporting single season fishing and the demonstrated inefficiency of current enforcement practices to control limited fishing in any season.

This conclusion should not be construed as impinging in anyway on the negotiation process currently underway on First Nations Treaty Rights, since the mandate given this panel "*does not have the scope to define or limit aboriginal rights*" (page 3 of the report).

RECOMMENDATION 8: FISHING IN LFA 23

The Panel recommends the return to the existing lobster fishing management protocol base on a single Spring fishing season in LFA 23 and the confirmation of the exclusion of commercial Fall fishery as a primary conservation measure. This conservation parameter should prevail in any signed agreement with the Burnt Church Mi'kmaq community.

RECOMMENDATION 9: FISHERIES ENFORCEMENT MEASURES

The Panel recommends that a conservation-driven community-focused enforcement program be developed, incorporating the principles of clarity, firmness and understanding, and that a special enforcement task force, recruited outside the region, be trained to function autonomously, efficiently and effectively in a theatre of operation characterized by inter-community conflict. Efforts should be made to integrate First Nations agents in the special task force. It should be operationally ready for the fall fishing season of 2002.

RECOMMENDATION 10; CROSS-CULTURAL TRAINING

The Panel recommends that a cross-cultural training program be developed and made available to all law enforcement agencies in the Atlantic region.

RECOMMENDATION 11: INDIVIDUAL OWNERSHIP OF FISHING LICENSES

The Panel recommends that DFO develop an alternative license transfer strategy based on a direct attribution of fishing licenses to individual members of the First Nations Community of Burnt Church. Enabling recommendations follow:

- **Institute a seven-member License Attribution Board with membership drawn from a cross-section of Burnt Church First Nations community members. (Elders, young people, women and a representative of the Band Council).**
- **Develop a license transfer contract under conditions of continuous active participation in the fishing industry by the license holder and containing a time graduated transfer of ownership of the license and the equipment to the licensee along the lines described in the body of the report.**

RECOMMENDATION 12: LOBSTER RESEARCH PROJECT

The Panel recommends that a major research project aimed at gaining reliable scientific information about lobster fishing in the Miramichi Bay area should be implemented. The specificity of the project is described in the following subsidiary recommendations:

- **Fund a five-year lobster research project whose objective will be to study all aspects of lobster fishing in the Miramichi Bay area that impact the conservation of the specie.**
- **Constitute a multi-disciplinary team of scientists to be located in the area and, to the extent possible, include First Nations scientists on the team.**
- **Recruit research assistants from the First Nations community of Burnt Church and from adjoining non-Native communities.**
- **Designate a site on which to operate an experimental lobster aquaculture farm and employ First Nations and non-Native staff as assistants to the scientific staff.**
- **Develop a community and public scientific information program complete with exhibits about lobster fishing including visits to the experimental pond.**

- **Develop and make available to First Nations schools, on a permanent basis, a fisheries science information program.**
- **Use the presence of a scientific task force in the region to develop the infrastructure for an aboriginal fisheries institute.**

The Panel was asked to listen to the communities involved in the Miramichi Bay conflict and to recommend "new approaches" to deal with the situation. We listened intently to the communities. Our recommendations match not only their concerns but, in many instances, reflect their views on how to embark on the road to social peace.

Our recommendations cover both short term and long term solutions. They call on the governments, not only DFO, to adopt a community focused comprehensive approach to problem solving. The government needs to regain the trust of the fisher communities of the Miramichi Bay area. Achieving that will require a fresh start, new attitudes and a strong resolve to get it right, all of which will only be possible through inspired and forceful leadership on the part of all stakeholders.

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Building Bridges

Miramichi Fishing Communities at a Crossroad

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INTRODUCTION

The Miramichi Bay area has been the scene of periodic social unrest since the Marshal ruling of 1999. When the Panel on Community Relations was constituted, in January 2002, negotiations between the Burnt Church Mi'kmaq community and The Department of Fisheries and Oceans, DFO, still had not produced an agreement on lobster fishing in the Bay. The Mi'kmaq community claims that the Marshall ruling confirmed ancestral and treaty rights, giving them authority to set the rules for lobster fishing in their community. So far, they refused to recognize DFO's jurisdiction over the management of the resource. They developed their own fisheries management plan calling for a high volume commercial fishing of lobster during the two fishing seasons of Spring and Fall.

Minister Dhaliwal succinctly stated the position of DFO on May 26, 2000:

> "I as Minister have the authority and responsibility to regulate Aboriginal commercial fishing. To quote the Court: *The treaty right is a regulated right and can be contained by regulation within its proper limits".*

Repeated attempts to sign an agreement failed and the situation degenerated into conflict between the Mi'kmaq community of Burnt Church and the non-native fisher communities around the Bay culminating into social unrest. In January 2002, the Minister appointed a Panel to study the situation in the Miramichi Bay area and make recommendations.

MANDATE:

The Community Relations Panel for Miramichi Bay was given the following terms of reference:

TERMS OF REFERENCE

Considerations:

An Approach that is Broad, Independent and Community Based.

- **The Panel provides an opportunity to examine issues from a broader perspective than fish management. The issues at play are more fundamental than competition for fisheries access. Traditional fisheries management strategies have not been sufficient.**

- **The communities involved have had longstanding differences and the Panel affords an opportunity to examine long term solutions. Long term peace requires a new approach.**

- **The Panel provides an opportunity for a community-focused approach to reconcile divisions and to explore options to support long term economic and social well being. It allows community leaders and members to air out concerns, to talk to one another about solutions and to take responsibility for solutions.**

- **An independent panel affords an opportunity to conduct politically neutral analysis of the issues. Its recommendations should carry additional credibility for community members as well as for different levels of government.**

Mandate:

- **Assess the current community relationships in Aboriginal and non-Aboriginal communities in the Miramichi Bay area.**

- **Discuss the situation with private citizens and community leaders and community members.**

- **Provide a consultation report to the Minister of Fisheries and Oceans regarding the current state of affairs and dealing with approaches for communities and governments to encourage Aboriginal and non-Aboriginal communities to work toward common purposes.**

The Panel:

- **The Panel will be community focused and would seek the views of the community members and leaders around Miramichi Bay.**

- **The Panel will be independent and will deal with broad approaches beyond fisheries management.**

Scope:

- **The Community Relationships Panel will hold private and public meetings with aboriginal and non-Aboriginal fishers and receive briefs from interested and affected parties. The Panel will meet with as wide a range of community members as possible.**

- **The Community Relationship Panel does not have the scope to define or limit Aboriginal rights.**

We intent to depict the situation in Miramichi Bay using the terms heard during our meetings. This is consistent with the action research approach we adopted to execute our mandate. We want to give voice to the people involved or affected. **When describing the mood of the communities, their language will be our language.** We hope that the reader will understand our intent. We aim to provide a window as well as a mirror to the communities to observe each other's moods and state of

mind. We hope that the picture they see will motivate them to wish for a change.

THE EMERGENCE OF THE ABORIGINAL PEOPLE

The events of the last three years may have been a necessary wake up call enjoining all communities to take note that a transition in the social order was in progress. New behaviors and new social values and norms will be required to accommodate the recently reaffirmed status of Aboriginal peoples. Their treaties are part of the Canadian legal landscape.

Mindful of its mandate, one of the first challenges the Panel faced was to select a terminology that would be respectful of the opposing communities. There are a reported 171 First Nation groups in Canada. In the First Nations' brief to the Royal Commission they state:

> "We are distinct nations - distinct peoples with distinct languages, cultures, traditions and governments. We are also nations in the sense that each First Nation has a political responsibility for its people." P. 9

In keeping with the spirit of the above declaration, and to insure that we do not transgress the scope of our mandate, which limits us to the Miramichi Bay area, we will refer to the First Nations community covered by our mandate by its distinct name: The Burnt Church Mi'kmaq community. With equal concern for proper identification and in recognition that the other communities also have distinct identities and interests, we will refer to them as the Anglophone and Francophone fisher communities respectively. This characteristic of the multi-cultural mosaic of Canada is important to acknowledge, particularly by a Panel established to review "community relations".

PAST TO PRESENT: A DIFFICULT TRANSITION

The Royal Commission on Aboriginal Peoples provides a vivid and troubling account of the travails of the First Nations over three centuries of European presence in this country. A summary account of the treatment of First Nations, at the hands of Canadian authorities, is contained in the introduction to their brief to the Royal Commission entitled: "Reclaiming Our Nationhood, Strengthening our Heritage" (1993), see Appendix 1. It is a fitting backdrop for the content of this report.

The Canadian Government saw fit to call a "Healing Conference" (Federal Response to the Royal Commission, videotape) where the Minister of Indian Affairs of the time acknowledge past wrongs of successive governments and institutions. At that time, the government promised a twenty-year period of unrelenting effort to change the situation of First Nations in this country. Thus, the facts surrounding the treatment of Canada's Aboriginal Peoples were never in dispute. But even if they had been, we would still have to deal with the extent and the strength of the perception of mistreatment exhibited by members of the First Nations communities who came before us. The Panel is struck by the similarities between the views of First Nations people and the description provided in those documents.

THE SOCIAL CLIMATE IN THE MIRAMICHI BAY AREA

The mandate calls for an in depth understanding of the views of the communities of Miramichi Bay relative to the situation that turned communities against each other. Their moods will be a determining factor in the choice of acceptable solutions.

THE MOOD IN MI'KMAQ COMMUNITIES

Members of First Nations communities in the Miramichi Bay area came forward in large numbers. They did not use heated rhetoric to make their case, they just described personal anecdotes in a simple, respectful, matter of fact, even apologetic manner. What we heard had the merit of being part of the life experience of those individuals. Upon hearing their accounts, we would be disrespectful and misguided if we did not give them credence. Those accounts attest to the conditions of despair that pollute the minds of a people having to face the many systemic, as well as subtle acts of discrimination, they still perceive to be subjected to, in virtually all aspects of their daily lives.

After generations of being stigmatized as a people needing to be "taken care of" on their reserves, it is not surprising, in fact it is predictable, that people would start exhibiting the behaviors that the dominant group expects of them. There is ample sociological and psychological evidence to suggest that an environment that does not actively foster the development of self-worth and self-respect among individuals will exhibit a higher incidence of ill-adapted and even self-destructive behaviors. No greater harm can be done to an individual than to be ignored. It is the equivalent of being denied existence. The reserves were a convenient way to achieve this negation of personal and ethnic identity. Out of sight out

of mind seemed to be the prevailing paradigm for dealing with First Nations brothers and sisters.

The stories of First Nations people all spoke of the difficulties of life on the reserves. We were touched by accounts of the devastating effects of alcoholism, substance abuse, violence and lawlessness within First Nation communities. In the words of an elder:

" Our pride has been damaged, big time."

He asked the Panel:

"What will an individual, with hurt in his heart, do if you give him a high powered boat?"

"What about the psychological damage that was done, not only to fishers and elders, but to our young children?"

Almost in a whisper he repeated several times:

"We are tired, we are very tired."

He offered a solution:

"Healing my people must come first before proceeding to an agreement. Boats, wharves, plants should only come after."

The Panel was privileged to attend a recognition ceremony for six young substance abusers that had completed a rehabilitation program at the Rising Sun Alcoholism Treatment Center on the Eel Ground reserve. Each was given the opportunity to speak. Their stories resembled Joe's story.

"My name is Joe, I am an alcoholic."

Joe is a member of the staff at the Center. His story of hopelessness, anger, despairs and suicidal tendencies mirrors that of those who are lucky enough to turn to the Center for help. One young man said:

" When I was drunk, no one would talk to me. Today I am straight and I am talking and all of you are listening. I like that!"

Sadly each story had the same familiar theme. They spoke volumes about past despair, but also about individual courage and hope. We were moved, touched, saddened and revolted that situations that foster such human tragedies would be allowed to persist, generation after generation without effective remedies.

A real understanding of the situation of the First Nations communities in the Miramichi Bay area must start with an acceptance of the stark realities of life on the reserve and the behavior it spawns. Loss of self-respect, idleness, despair and escapism in the form of substance abuse adds up to one frightening reality: a people with nothing to lose.

Yet, there were examples of success shining through the bleakness. We were impressed by accounts of communities who, despite the odds, were blessed with inspired leadership. Leaders who struggled against the authorities, the system and against some of their own people because they wanted their communities to renew with the feeling of self- respect, a sense of purpose, a sense of pride, a sense of accomplishment. They wanted to create a community of law-abiding, peaceful and industrious individuals. Perhaps there are too few such stories, but there are enough to nourish hope that a change for the better is possible.

Among the many changes that will be required, the very first to consider will be to find effective ways of involving the First Nations in decisions that affect their communities and their lives. We were told:

"It has been a continuous fight to repossess our rights".
"We need harmony, balance, respect."
"We need more people with jobs."

The Panel is conscious that its work represents yet another study of situations involving First Nations. So many have been done with so little

results that skepticism is to be expected. Perhaps that is why our repeated efforts to meet with the Chief and his Burnt Church Band Council were acquiesced with a perfunctory meeting towards the end of our mandate. There was an openly expressed cynicism concerning the potential value of the Panel. Indeed, what can one more study reveal that has not already been repeated in all the previous studies about the First Nations situation in Canada. An effective action plan is what the First Nations communities are waiting for. It is not difficult to understand their quiet refusal to get involved, yet one more time. It could be their way of saying: show me you really mean business, then we will talk.

Nevertheless, it is public knowledge that the administration of the reserve has come under scrutiny. Its finances are currently under third party management. A member of the Burnt Church Mi'kmaq community told us:

"Third party management is a good thing."

The Panel has hearsay evidence suggesting the other motives may be driving the governance situation in the Burnt Church Mi'kmaq community. We cannot validate the substance of such allegations, nor was it our mandate to do so. We are left with an unfortunate void in our search for a balanced understanding of the situation. What is more problematical, the absence of official community representation does not bode well for a community based problem-solving approach to what has been described, by natives and non-natives alike, as a troubling and potentially dangerous situation for all concerned.

The Panel also heard the views of a group from The Burnt Church Mi'kmaq community who basically refuse to accept the authority of the Canadian government over their lives. These views occupy the end of the

continuum of community opinion. In that sense they are extreme. Yet their presence in the First Nations community must be acknowledged. There is no doubt they will work against any attempt at finding solutions that would be acceptable to the entire Miramichi Bay community, including First Nations communities, if such solutions are perceived to impinge on their view of the world. Theirs is a revisionist approach to history. It denies the legitimacy of Canada as a country. We understand that individuals have the right to hold such views, but it must be said clearly that sympathy for the cause of the First Nations people cannot be expected to accommodate such a radical and revisionist interpretation of history. The way peoples' destiny has brought them together has not always been models of respect for the dignity of humankind. However, history is being written everyday. What counts is how different peoples work out their difficulties for the greater good of everyone as they journey on. The Burnt Church incidents will have their place in history and the situation will be resolved in the end.

The Panel's mandate specifically excluded any dealings with aboriginal rights. It obviously excludes the breakup of Canada as one of the possible avenues to explore in reaching a settlement. The lessons of history will be useful to the extent that they instruct on how to avoid repeating past mistakes in our current attempts at solving problems. In this sense, the active participation of First Nations people will be invaluable. They know better than anyone does what should be done in order to avoid perpetuating the errors of the past.

Canadians of diverse origins inhabit the land. That is Canada's undeniable historical fact of life. What will give the history we write together its distinct character will be the creative solutions we came up

with to resolve our differences and solve problems we encountered on the journey.

The Panel also heard from a broad cross section of First Nations members whose aspirations are for a better life and a return of human dignity to their people. Such aspirations transcend political solutions and we feel bound to search for ways to involve them in the search for acceptable solutions predicated on mutual respect.

RESPECT: A COMMUNITY INVOLVEMENT PARADIGM

The lobster fisheries situation in the Miramichi Bay area will be very difficult to resolve without active community involvement. However, there is hope. It strengthens our resolve to do our part to initiate change that will bring about the long awaited respect the First Nations people of the Miramichi Area crave, and everyone in the other communities expect. We are convinced that anyone, who took the time to listen to the people of the First Nations as we have, would develop a firm resolve to do something to facilitate the "Strengthening of their Heritage". These words, to us, have become synonymous with **self-respect, pride and self-reliance**. Those are universal values that all Canadians would want for themselves. Indeed, Canadians have gone to war to preserve such values for others and they would surely struggle to preserve them for themselves, if ever they were threatened.

It would be a mistake to treat as folklore, the hard struggle of First Nations to survive as a people and be accepted on par with other Canadians. It is to their credit that they have managed to do so despite centuries of willful neglect, first at the hands of the Crown, subsequently at the hands of Canadian authorities that replaced the Crown. In recent years, the courts of our land have validated their rights and now they

want to come out and claim what is theirs. They are no longer satisfied to fade away from social consciousness back on their reserves. Maramichi is not the first community to experience such coming out and it will not be the last. But what happens henceforth, in this community, will mark one more step in the evolution of human rights in this country.

The Panel concludes that imposing long term solutions at this time would be a step backward. As one native person said:

"We want consultation, not imposition".

The Burnt Church Mi'kmaq community feels justified in asserting its rights. Any proposed solution will have to acknowledge their quest for respect and will have to provide concrete evidence that they will be full partners in the search for a return to social harmony. However, it is beyond this Panel's mandate and purview to entertain solutions that are predicated on the negation of the existence of Canada. Our working assumption is that a Canadian solution must be found to resolve the current social discord.

THE MOOD IN ANGLOPHONE AND FRANCOPHONE FISHER COMMUNITIES

The Panel is not interested in creating shock waves. The waves are turbulent enough as it is. We are giving voice to the people, yet we feel the need to say: "don't shoot the messenger". A lot of actions, some conciliatory, some repressive, have been initiated since the Sparrow and Marshall rulings, but the situation in the Miramichi Bay area is still unresolved.

"Why can't we meet?"
"We have to get together."
"It's very important they talk to fishermen."

Those calls for involvement were heard in the anglophone and francophone fisher communities.

"You are our last hope."

That is what the Panel was told by some fishers, angry at:

"The government for mishandling of the situation."

Angry also at their representative body, the Maritime Fisherman Union, MFU:

"We are not being informed."
"We don't know anything."

Above all, blaming the Department of Fisheries and Oceans Canada, DFO:

"The Minister waited too long, DFO had no plan B" (in anticipation of the outcome of the Marshall ruling)

"The Minister would say something and do something else".

If a consensus exists among the communities at this time, it is in relation to the mishandling of information. Fishers from all communities feel that DFO and the MFU did not fully and adequately inform them. They felt left out of the process of negotiations, despite the fact that the outcome

of such negotiations would affect not only their way of life, but also their very livelihood.

The authorities can claim they informed the population through numerous press releases. These were provided to the Panel as part of a comprehensive background information package (Appendix 3). But, as one local journalist observed, by the time the information process was initiated, it had been turned over to the "spin doctors". The messages were perceived primarily as an exercise in damage control aimed at public opinion in the rest of Canada and the world.

> ***" The Government has done a shameful job communicating to the non-native communities."***

The Panel was surprised to hear that our meetings were the first opportunity individual fishers had to discuss the issues. We are not interested in laying blame, but we feel obligated to report the mood of the communities. We are quite conscious that perceptions drive people to action. Therefore, understanding the perceptions of those involved is key to a clear definition of the community relation problems arising from the fisheries events of the past three years. In the absence of an effective community information and involvement program, perceptions have become a proxy for the truth in the Miramichi Bay situation.

As a general rule, the less reliable the available information, the greater the danger that perceptions, not facts, will be the driving force behind the actions of individuals. In the current situation, perceptions are fueled by the fear of the unknown to which the high-octane ingredients of prejudices and stereotypes have been added. That is a volatile mixture. It has already erupted into a dysfunctional breakdown in community relations.

The severity, rapidity and disruptive nature of the changes to a way of life in fisher communities only serve to exacerbate the situation. Evidence is accumulating that the rush to conform to the Courts' rulings and the choice of a narrowly focused mechanistic strategy to effect social change is introducing a cycle of social deconstruction in the non-native communities that will have far reaching effects well into the future.

> ***"Five years ago, a license and a fully equipped boat would sell between $80,000 to $100,000. The government, through DFO, offers between $300,000 to $350,000."***

That has prompted some to say:

> ***"They are trying to buy peace at all cost."***

The fishing tradition that has been the mainstay of communities for generations is being dismantled.

> ***" An unsolicited check for $300,000 is a serious test of a father's love for his son."***

The father facing retirement cannot afford to transfer his license and his equipment to his siblings.

> ***"Even if a young fisher wanted to buy the license, he could not afford it."***

There is only one viable alternative left for young people: migration! Communities will lose the vital energies of its youth that have insured their viability and their existence generation after generation.

In addition, the collateral damage spreads to institutions initially set up by the fishing communities to service their needs. Self-reliance has been the hallmark of those small communities over the years.

> ***" A cooperative that has been around for close to a century lost fifteen members and 25% of its business. Last year it lost $700,000. It is driven to bankruptcy."***

In that particular region, DFO signed a one-year agreement and transferred 44 licenses and boats to one of the First Nations communities.

The buy back strategy may achieve the objective of equipping the First Nations to participate in the fisheries industry without increasing the demand placed on the resource, but the evidence points to a serious displacement of social problems. There is no known plan to compensate for the collateral damages caused by an ill-conceived strategy of social change. Overnight, communities were dispossessed of their traditional way of life. Conversely native communities inherited fishing capabilities without the knowledge to exploit them effectively.

" Out of the 48 licenses, 13 were actively fished."

Boats stayed anchored at overcrowded docks when they normally would have been fishing:

"Some newly minted captains could not afford the gas to take them out."

A person actively involved in trying to ease the transition stated:

"The native fishers didn't become the laughing stock of the non-native communities but it came very close."

Surely, the Court did not intent to create chaos with its rulings. It wanted to confirm the obligation of Canadian society to respect the rights of First Nations to fish. But they also dictated that solutions should be mindful of the rights of other communities whose livelihood depended on the same resource. In our opinion, the buy back of licenses and equipment at greatly inflated prices hardly meets that test of fairness. It is equally difficult to accept that the delivery of a fishing fleet to a community of untrained fishers contributes much to the respect of First Nations' rights.

"It is not fair to the native communities because there will be failures and there is sure to be finger pointing."

The Panel is left with the distinct impression that the community relation mandate it has received should have been the starting point of the change process precipitated by the Sparrow and Marshall rulings.

HOPE FOR THE FUTURE

However, and surprisingly perhaps, there is a lot of goodwill still present among the francophone and anglophone communities after what some described as:

"... a most profound issue that has ripped our hearts".

We heard a community leader say:

"We would like to feel hope and renewed trust in government."

The Panel feels there is a sense of urgency to initiate effective community based actions. An anglophone fisher told us:

"There will not be peace until there is one season".

That sentiment was echoed in the francophone communities:

"You can't have two seasons."

Similar sentiments were expressed in different ways by anglophone and francophone fishers alike. The forcefulness of those statements mirror the resolve of fishers to defend their livelihood:

" Lobster is the only one that allows for a living."

It would be a serious mistake not to heed the plight and the warning of the individual fishers.

It seems clear that the Fall fishing season was, is and will continue to be the lightning rod for social discontent on both sides. From the anglophone and francophone perspective, allowing even limited commercial fishing during the Fall season will not be conducive to the restoration of social peace. It is equally clear that an imposed solution, whatever legal legitimacy it may have, will not prevent further unrest. A francophone fisher was adamant:

"Fall fishing just can't happen."

That sentiment is wide spread in the non-native fishing communities.

A francophone community leader, anxious to restore social peace was insistent:

"You have to resolve the crisis first, there is an absolute need to have an agreement in place."

Fortunately, there seems to be a general consensus that the Spring season 2002 will be uneventful. Within the memory of active fishers and, more specifically, within the past three years, Mi'kmaq, anglophone and francophone commercial fishers fished side by side, without incident, during the spring season.

"Commercially licensed native fishermen fished without problems."

The same is expected for Spring 2002.

The Panel sees encouraging signs in that situation. It seems to confirm that racism is not at the heart of social unrest in the Miramichi Bay area. If racism were the driving force, friction would flare up anytime the two groups got together. An RCMP officer commenting on the social climate stated:

"When the Bay freezes up, the problem goes away."

And a seasoned reporter commented:

"The basic tendency is for those communities to get along."

We conclude, after listening to the non-native communities, that the difficulties of introducing a profound change in the fishing communities, with its protracted social and economic ramifications were, at best, underestimated, at worst mismanaged. As a result, the trust between governments, their agencies and the anglophone and francophone fisher communities is in serious need of repair.

The evidence also suggests that the search for viable solutions will have to be community based. Community involvement must be viewed as the most effective way of achieving a satisfactory long-term solution. It is probably the only way to rebuild the trust, currently at low ebb, among the stakeholders.

But when trust has been lost, the rebuilding process must start with a return to basics. The Panel believes it is worthwhile to devote time to the development of a factual base around which all parties can come together to start the rebuilding process.

COMMUNITY SOCIO-ECONOMIC PROFILE

The Panel sought to understand the socio-economic landscape of the communities involved in the Miramichi Bay disturbances. We believe that the root cause of social disturbances lie beyond the symptoms of the unrest. Finding lasting remedies depends on identifying the real issues driving communities apart.

To insure the relevancy of our analysis, we focused our attention on the affected communities. Statistics Canada's 1996 Census provided the basic data for the construction of our information base for Northumberland County. In particular, we felt it would be meaningful to compare fishing communities and particularly the Burnt Church Mi'kmaq community and the adjoining town of Néguac.

Our analysis focused on three main components, the age profile of the community, the education levels of the individuals and the earnings profile of individuals and family. The detailed statistical analysis, included as an addendum, is an integral part of this report. We chose to only include the summary findings in the main body of the report for editorial and readability reasons.

DEMOGRAPHIC PROFILE

There are noticeable differences in the age distribution of the population of the Burnt Church Mi'kmaq community and Néguac. The most striking differences are in the youth segment and the life expectancy of the population. The Burnt Church Mi'Kmaq community is experiencing a rapid expansion of its young population, 52% are below the age of 25 compare to Néguac's 34%. The significance of this demographic trend is the pressure the young generation will put on the employment market.

Where will the jobs be for the strong contingent of young natives reaching employment age?

The resource base economy of the whole Northumberland County is characterized by endemic underemployment. The proportion of earnings coming from transfer payments readily demonstrates that fact. First Nations residents of Burnt Church rely on transfer payment for 40% of their income, while in Néguac the proportion is 30%. Both are higher than the County average (26%). Of course the reliance on transfer payment throughout the region is much higher than the rest of Canada. However, employment statistics only tell part of the story because they don't account for people that have left the job market. It is reported that as many as 80% of working age First Nations people are without employment.

Employment prospects are bleak in the region as a whole and they are particularly distressful for First Nations people. The social cost is also quite real because idleness is the breading ground for many social ills including resentful behaviors toward a society that does not provide hope and opportunities for a better life. Social unrest is just one of the many ways people display their anger, adding to the volatility of the social climate in the Miramichi Bay area.

Education is another barometer of a people's optimism about their future. Here also the situation in the Mi'kmaq community of Burnt Church is strikingly different from that in the neighboring community. First Nations youth leave school earlier than their counterpart. Only 5% of the population of the Burnt Church Mi'kmaq community graduated from high-school compared to 11% for the Néguac community. As might be expected, the comparison carries through to university graduation

with only 2.6% of the native population of Burnt Church having completed an undergraduate degree or higher compared to 8.6% for the Néguac community.

In the knowledge based economy of today, the lack of education compounds the difficulty of successfully competing on the job market. The vicious cycle of no education no jobs, no prospect of employment no need for education is taking a terrible toll on the youth population of the Burnt Church Mi'kmaq community.

The evidence is clear and the conclusion inescapable, a new approach aimed at developing the full potential of First Nations people is urgently required! It starts with capacity building around quality schooling in the First Nations communities and in particular in the Burnt Church Mi'kmaq community. A renewed dedication to finding an effective, workable solution that will motivate the youth of that community to turn to education as a way of improving their condition in life is urgently needed.

ECONOMIC PROFILE

We used income statistics to conduct a series of comparisons between the communities. We analyzed the situation of the Burnt Church Mi'kmaq community earners and compared it to that of Néguac and the County. The comparison based on unadjusted income data points unequivocally to the existence of a systematic income disparity between the Mi'kmaq earners living in Burnt Church and the residents of other communities in the Northumberland County. The disparities are equally noticeable when the comparison is made with francophone and anglophone communities of fishers as represented by the Néguac and North Escuminac communities respectively. For example, a First Nations

male living in Burnt Church earns 42% less than the average for an individual in the County. The discrepancies hold true across the other categories of female and family earners.

We also analyzed the impact of the differentiated tax treatment between the two communities. Using an adapted Purchasing Power Parity adjustment factor, we were surprised to observe that the disparities between the two communities were much less significant than was the case with the unadjusted data. They ranged from 3%, when comparing the income of families working full-time-full-year, and 5% when comparing the average per capita monthly income.

Our analysis demonstrates that when the two communities of The Burnt Church Mi'kmaq reserve and Néguac are analyzed on a comparable earnings basis, they are much closer to each other than unadjusted earnings would lead to believe. The economic conditions of the two communities have more in common than popular perception might suggest. Perhaps the mutual awareness that they in fact share the same hardship should constitute a unifying force, not a divisive one. It is something to build on.

SOCIAL COMMENTARY

The life expectancy statistic dramatized for us the hardships of living on the reserve. Only 3% of the First Nations population of Burnt Church live beyond their 65th year, that compares to 13% for the inhabitants of Néguac. The current life expectancy is substantially below the average for surrounding communities attesting to the fact that life on a reserve is exacting for native people..

The Panel believes that a major community renewal effort is urgently needed in the Burnt Church Mi'kmaq community. The aim should be to improve the quality of life for the residents. That is an essential component in the edification of a solid foundation for a lasting social peace. In comparison, fishing licenses and equipment can only provide symptomatic relief.

LESSONS FOR THE FUTURE

The preceding analysis also carries a lesson for the communities involved. They should be more conscious that anything threatening the livelihood of one threatens that of the other. Both may feel justified in trying to improve their lot, but each should expect a strong reaction from the other, particularly if one is perceived by the other as trying to alter the current sharing of fortunes unilaterally.

To the extent that common sense prevails, enlightened self-interest would dictate the search for a mutually acceptable sharing of resources. Failure to do so will most probably lead to a further escalation of violence in the confrontations between the two communities. In that event, government would have to intervene to restore social peace and their methods would no doubt match the forcefulness of the tactics used by both sides. The first casualties likely would be vandalized equipment, an outcome that is certain to influence the economic well being of both communities. This is not mere conjecture on our part. The scenario already has been played out in the Fall of 2001. It is likely to intensify in the future, if no one steps back from the brink.

Should new conflicts break out, the presence of registered firearms in the fishing communities certainly adds to the danger. Beyond the economic loss, people could be paying with their lives in future confrontations. That is not an alarmist view, shots were fired in the Fall of 2001. One RCMP officer told us:

"Machine guns were fired last Fall."

Boats were rammed. A few individuals have already gone beyond the brink. Charges have been filed. There is every reason to believe that another confrontation would bring more of the same.

A CHALLENGE TO LEADERSHIP

The quality of leadership of all those involved will be put to the test. The communities need time to work out acceptable solutions to the lobster fisheries crisis in the Miramichi Bay area. In the meantime, DFO should pull back from signing an agreement that would alter the conditions of the francophone and anglophone fisher communities. If it persists in negotiating a two season fishing agreement in LFA 23 with the Burnt Church Mi'kmaq community, civil disobedience is sure to ensue. Any final agreement will have to include both sides and be agreeable to both. There is no evidence that the people we talked to are ready to let DFO act alone at this stage.

Furthermore, there is ample evidence that the MFU does not have the support of its members to reach a settlement with DFO on their behalf.

The only feasible short-term solution is a moratorium. The situation needs breathing room. The communities need time to cool off. Short-term solutions must be found before the onset of the Fall fishing season.

There is indeed a need for new approaches as intimated in our mandate. But before we address the question of solutions, another component of the common database is required: the science of the lobster's existence. The animal is certainly unaware of the impact it is having on humankind, but humans cannot ignore the impact they are having on lobster-kind.

LOBSTER FISHING: SOCIAL, ECONOMIC AND SCIENTIFIC CONSIDERATIONS

Most disputes usually involve several major areas of concern and have one common characteristic: a breakdown in communications. In the Miramichi situation, several factors combined to make it difficult to communicate. The groups involved in the dispute are not homogeneous. There are ethnic differences, linguistic differences, cultural differences, and knowledge differences at play.

CONSERVATION: AN ABORIGINAL PERSPECTIVE

The main point of contention is the conservation of the lobster specie. Tradition and science combined to produce what communities know about conservation practices. Most of what is known was acquired over time and transmitted orally through the ages. The First Nations communities claim that their concern for conservation dates back to time immemorial; that their relationship with Mother Earth and its resources are at the center of their cultural and religious beliefs. In earlier times, hunting, fishing and gathering was part of the daily chores of living. Preservation of food was limited, therefore, the practice was to *take only what was required to sustain life.*

It is safe to assume that conservation would not have been a prime concern before the arrival of Europeans in North America. The level of consumption would not have threatened the stock. Supply would have exceeded demand in food gathering societies. The resources would have appeared inexhaustible.

In the past, the most logical time to fish would have been when species appeared to be most abundant. That is when it was most efficient to

access the food source. In the case of lobster, fishing in season most likely meant fishing during the time of the year when they migrated to the shallow waters inshore.

From that perspective the notion of fishing out of season, or poaching, is a foreign concept to aboriginal cultures. It is an arbitrary definition dictated by an interventionist approach to the management of fish stocks. It is a new rationality being imposed on a natural symbiotic relationship with nature. This needs to be understood if we want to understand the First Nations' position on fishing or gathering of any type. Indeed, they are true to their ancestral ways and that, it must be said, was the most efficient way to go about the task of feeding themselves then. Thus, poaching is truly a foreign concept ordained by an administrative dictate unrelated to tradition and even to natural logic.

From the First Nations' perspective, being punished for not respecting an arbitrary dictum would seem totally unfair and prejudicial. In fact, that is the basis for the Sparrow ruling. Henceforth, accessing natural resources for food, social and ceremonial purposes is an accepted practice allowing First Nations to renew with their ancestral ways and to reclaim part of their identity as a people.

Given the importance of those activities to the wellbeing of their communities in the past, it is not surprising that the exploitation of natural bounties would have been incorporated into their culture and religious beliefs; survival itself was at stake. It is important for non-native communities to know that the First Nations ceremonial rites and religious beliefs are not just quaint folkloric manifestations. They are essential to the First Nations re-appropriation of their past and their identity. The symbiotic relationship between the First Nations and

Mother Earth, over millennia, should not only be understood, it deserves respect.

The First Nations quest to re-appropriate their history and their identity is no different than the quest of their Acadian brothers and sisters next door. Nor are they different from the English, Irish, French, Scots, Poles, Ukrainians, Jews, Italians, Portuguese, Africans and Pakistanis, to name a few ethnic groups that enrich Canada's ethnic and cultural mosaic. All take pride in their ancestral lineage and each draw from them the strength to give their communities a distinct character that enriches everyone's lives.

Unfortunately, indigenous peoples have been denied that privilege for more than a century. It is their turn to claim the right to their distinctiveness as peoples. The Courts are enjoining the rest of Canadian society to facilitate the emergence of First Nations as full partners as a necessary step in the ongoing task of building a better country for all. The current crisis in the Miramichi Bay area provides an opportunity to turn things around and to take a major step in building a better country for all.

CONSERVATION: A NON-NATIVE PERSPECTIVE

The non–natives' relationship to the conservation of the resource is different. The arrival of Europeans in North America was driven by economic considerations. Mercantilism was the driving force behind colonialism. The transformation of natural resources into an economic good was a necessary step in sustaining their livelihood. They did not have the same cultural attachment to the natural environment as had the Aboriginal people they met. Nevertheless, their dependence on Earth's bounties is no less real. As they developed a better

understanding of the importance of ecological equilibrium to their own way of life and livelihood, they developed their own strand of beliefs about the value of preservation of the natural resource they depend on for a living. As might be expected, the concerns of the non-native fishers are centered on the sustainability of the earnings from which they get their livelihood.

CONSERVATION: THE NATURAL PROCESS

The Panel does not intend to discuss the science behind the scientific findings provided in the background documentation and briefings. Scientific considerations in this section rely on the Caddy report;

> " The state of knowledge of the lobster resource in Miramichi Bay and adjacent waters; some suggestions for conflict resolution over the fishing seasons, and ideas for fisheries research in support of lobster management", summer 2001.

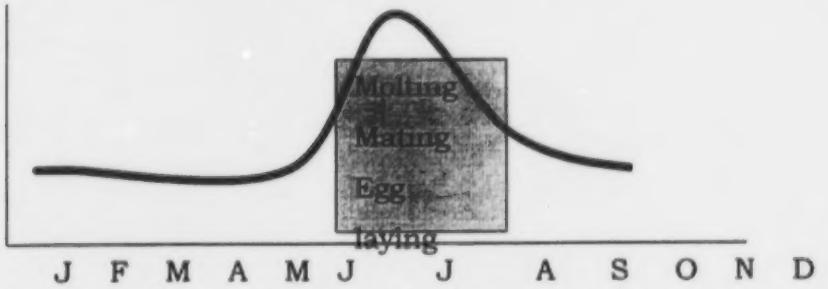
We also relied on the excellent presentation by biologist Lanteigne on:

> "Lobster biology/Fishery; Homarus americanus".

One of Lanteigne's charts, presented below, captures the essence of the problem.

Chart 1

Lobster life Cycle (the annual cycle)



Lobsters reproduce actively between mid-June to mid-August. Science postulates that warmer waters provide a better environment for reproductive success. In particular, scientists posit that warm waters favor a higher survival rate during the initial stage (planktonic) of the lobster life cycle. The climactic conditions in the bay area are such that shallow waters are warmer than deeper off shore waters during the summer months. That triggers the migration of the lobster to inshore waters. The migration concentrates the lobster into smaller areas making the catch easier and more abundant. One experienced fisher told us:

> ***"I would sell my license, my boat and the 300 traps I use in the Spring season, provided I was given a license to fish 50 traps in the Fall with my small dory."***

Such ease of harvesting may explain why out of season fishing (poaching) took place in the past.

Science confirms the wisdom of the fisherman's preference. Dr Caddy writes:

> 4) "Estimates of the ratio of vulnerability to capture, or "catchability" in the spring and fall suggest lobster range from 2.5 to 9 times more catchable in fall than in spring, with the best supported estimate being around 5-6 times. This increase is due to higher activity in warmer water temperatures, the need to feed to replenish reserves lost in molting and egg laying, and due to a higher density of animals on inshore grounds in fall", p. 3

After a sustained period of information, backed by enforcement, fishing out of season (poaching) was reduced substantially in the Miramichi Bay area and fishers enjoyed years of unprecedented abundance. The landings peaked in 1989 and, despite a slight downward trend in recent years, they still remain at historically high levels. Results speak louder than science and fishers are now convinced of the wisdom of

conservation practices. The lesson learned from experience is that: protecting the reproductive cycle of the lobster was to everyone's benefit. As discussed earlier, their First Nations neighbors could have told them that a long time ago. Unfortunately, the message had to go through too much cultural static to be decoded and understood.

CONSERVATION: A MEETING OF THE MIND

People have taken different path to the same meeting place. The First Nations reached the conservation destination on the wings of ancestral wisdom. The non-natives have traveled the highways of economic and market logic.

The non-natives now understand the wisdom of the First Nations people's belief that, if you respect nature, it will provide for you. They have become fervent proponents of conservation. In the end, the road chosen by different people should not matter, it is the destination that counts. Both groups have now reached a common meeting place. Their objectives are the same. A common purpose is present. It could unite the opposing groups. Despite the difficulties of decoding the basic intent of each group, the basis for a friendly and peaceful resolution to the conflict exists. Members of both groups want to make a living from the same resource base. Their success will depend on reaching an agreement about its conservation so that, baring natural disaster, it will continue to yield its bounties for future generations of fishers.

CONSERVATION: ENCODED MEANINGS

The common objective is present but the difficulty in decoding it should not be underestimated. It is very likely that the current understanding of the common objective bears little resemblance to the original source of information on the subject. It is well known that a message,

communicated orally from person to person, gets distorted. The larger the number of people involved in the relay of information, the worst the distortion. Experiments have shown that after a fifth relay, the content of the original message has been completely lost. More often than not the message at the end is in total contradiction with the original information.

For example, in the smelt and mackerel fisheries, fishers go out "in season" which, in this case, correspond to when the fish is most abundant. It is possible that the behavior of those species within the Bay area may also be related to their reproductive behavior. At the current time, science is merely observing a migratory pattern, one that is well known to fishers. Quotas are also imposed as a preventive measure although what constitutes a sustainable yield is still not fully researched. The parallel between the migrating schools of those species and the migration of lobsters leads to different conclusions as to the meaning of "fishing in season".

Also, the distortion in the message increases when the topic being relayed is unfamiliar to the message receivers and senders. In the Miramichi Bay situation, lobster fishing is involved and that is well understood by the fisher communities. However, when it comes to conservation issues, the relevant information is of a scientific nature not readily accessible to those communities, the likelihood of distortion is greatly increased. The distortion is further amplified when communications occur in an emotionally charged climate.

All those conditions are present in the Miramichi Bay situation. Thus, it is not surprising that facts have given way to perceptions as the mainstay of conventional wisdom surrounding the relationship between the yield of the lobster stock and the conservation of the specie.

The fundamental nature of the message in this situation is that when the season is not synchronized with the natural cycle of abundance, it involves an arbitrary intervention of man. When that occurs, there are two ways to proceed: 1) through unilateral action, a practice usually accompanied by the use of coercive measures; 2) the negotiation of a mutually acceptable solution between the principal stakeholders.

It is fair to conclude that up to now, the decision process leading to the choice of fishing season was unilateral. Now that coercive measures have proven ineffectual, a negotiated settlement appears to be the only road to peaceful community relations.

The current regulations are designed to preserve the resource, by balancing the increased technological capabilities for resource exploitation with the natural process of stock renewal. Yet there are apparent inconsistencies. Why is lobster fishing allowed during a Fall season in area 25 which is adjacent to area 23 where Spring fishing is enforced? It is obvious that the realm of scientific justification based on the reproductive cycle of lobsters as given way to other considerations. In the Atlantic lobster fisheries' case, the goal is to stretch the supply over a longer period to meet consumer demand and to avoid creating a glut in the market that would reduce the economic value of the resource to the fisher.

THE NUMBER OF FISHING SEASONS: A TRADEOFF

The Marshall rulings had a significant impact on DFO's fisheries management practices. In particular, efforts to sign an agreement with the Burnt Church Mi'kmaq community led to the issuance of fall fishing licenses to the native fishers. The fall season overlaps the most active

period of lobster reproduction. Non-native fisher communities are convinced that fishing during the summer months, when lobster moves inshore to molt and reproduce threatens the future stock of commercial size lobster. They perceive DFO's initiative as a threat to the conservation of the stock. They fear that their livelihood has come under attack:

"Lobster is the only fishing that allows for a living."

Thus, the number of commercial fishing seasons in a single year is at the heart of the Miramichi Bay conflict. It is also the principal irritant to non-native fishers. Science seems to validate their concern. Dr Caddy offers this unqualified opinion:

> "This consultant is generally of the opinion that one fishing season should be decided on, since he is unaware of fisheries around the world that successfully regulate two open seasons in the year with the logistical implications involved." P.7

However, he seems to crack open the door when he adds:

> "However, accepting the points of view of the parties, two seasons might be workable, but only with good surveillance and under a catch allocation by season or fisherman that is properly supervised." P.7.

The last statement is qualified: *"accepting the points of view of the parties."* The author is careful to distance himself from the "*views of the parties*". The Panel believes that within Dr Caddy's message is an encoded warning: ***"TWO SEASONS MIGHT BE WORKABLE".*** That does not constitute a ringing endorsement. What if the two-season approach didn't work? What repercussions would it have on the resource?

We turn once more to science for an answer. According to Lanteigne:

> "It takes 5 to 8 years for a lobster to reach sexual maturity".

It takes an additional two years from the time of mating, to the release of the larvae into the planktonic broth. In total, the regeneration of a commercial size lobster takes between 7 and 10 years.

We gain a new perspective on the issue of conservation if we consider that the lobster reaching harvesting size in 2002 came from females born in 1995 or perhaps as early as 1992. The very long maturing process argues for conservation policies that err on the side of caution.

For example, if the two-season approach was sanctioned and if it had a negative impact on conservation, it is possible that the damage would only start to show up five years later. By that time, five years of damages to the stock would have accumulated. Such an extrapolation may not be scientific but it seems plausible, and judging by the sudden collapse of the cod fisheries, it even seems quite probable. Thus, a mistake in fisheries management practices could wipe out a lucrative industry, inflicting collateral damages to individuals and communities that can ill-afford the severe disruption and untold hardship a loss of their livelihood would bring about.

It may be argued that such a doomsday scenario has a low probability of occurrence, yet we believe it falls within the realm of possible outcomes. Dismissing it would be imprudent.

When searching for a compelling and overriding argument that might warrant taking such a risk, we could find none. Firstly, the court rulings specify that conservation and the impact on surrounding communities who rely on the resource must be taken into account when devising policies and agreements relating to the management of renewable

resources. It is not our understanding that this requirement would be subject to discretionary administrative accommodations.

Secondly, one of the primary objectives of the rulings, beyond the recognition of ancestral and treaty rights, was to provide opportunities for First Nations to "earn a modest living". That social objective, together with the conservation imperative, calls for an approach to resource management that will insure, to the greatest extent possible, lasting benefits to the current generation of fishers and those to come.

The government and its agencies have a moral and fiduciary responsibility to act in the best interest of the beneficiaries of the resource. That should steer them away from high-risk solutions that "**might be workable**". Uncertainties of that kind should be resolved either through a better scientific understanding of the capacity and "renewability" of the resource or, in the absence of such knowledge, by adopting time proven management principles and methods.

The Panel heard all parties say that conservation should not be overlooked. It will be impossible to avoid dealing with the conservation issue when searching for a durable solution to the current crisis. A return to peaceful and harmonious relationships between the communities will depend on finding conservation friendly accommodations between them. We are convinced that both sides to the current dispute would find it in their best interest to come up with solutions that would protect the resource to insure the ongoing viability of their lucrative industry.

Up to now, DFO has single handedly set the agenda and driven the negotiation process. In the documentation provided and in meetings with

DFO officials, we observed a tendency to focus on the fine points of the available scientific knowledge. It may be a way of rationalizing their choice of a two-season fishing agreement with the Burnt Church Mi'kmaq community.

Based on the scientific knowledge to date, one season fishing for commercial purposes is the only prudent approach available at this time in lobster Fishing Area 23.

We certainly empathize with DFO's senior management quandary. The events in the Bay are not a shining example of the Canadian way of life. Political pressure is no doubt heavy and constant on them to find a solution quickly. Regaining some control over disgraceful events of social unrest is imperative. However, it is doubtful that peace should be bought at the expense of the long-term viability of the industry.

The Panel is not inclined to debate the scientific fine points of solutions that "might be workable". **We are convinced that the social climate is not conducive to experimentation of a kind that would introduce a second fishing season for lobsters in the Miramichi Bay area.**

It is possible that the non-native fisher communities of the Miramichi Bay are draping themselves in the conservation mantle, supported by science and dictated by the courts, to cloak their overriding concern for their livelihood. But, it is also likely that their behavior is driven by desperation, since they know the economy of the region does not offer them alternative employment opportunities. Finally, it may be simply that they enjoy lobster fishing as a way of life. One fact is indisputable, they have mounted a forceful, if disruptive, defense of their point of view and interest. Their state of agitation was sufficiently strong to ignite

social unrest. Given the situation confronting them, fishers felt justified in breaking the law and law enforcement measures did not prove an effective deterrent to their actions. If authorities maintain their current course, the same result will likely obtain.

At this time, the absence of an agreement between DFO and the Burnt Church Mi'kmaq community may be a blessing in disguise. Our understanding is that consideration was given to allowing Fall fishing in LFA 23 for Mi'kmaq fishers from Burnt Church. Introducing a second season for one group while denying it to the non-native fishers is viewed as discriminatory. Judging by the overwhelming reactions of the fishers in the anglophone and francophone communities to such an initiative by DFO not only would displace the problem, it would make matters worse.

Despite the obvious urgency of achieving tangible results through a negotiated agreement, it is time for DFO to pause long enough to extricate itself from the flurry of activities that characterize its interventions in the fisheries management dossier of Miramichi Bay.

It is the Panel's belief that a management approach designed to bring about an asymmetric treatment of the lobster fishers in the Miramichi Bay suffers serious flaws. As far as can be determined, any attempt to move in the direction of a two season agreement within LFA 23 will be perceived as iniquitous by the non-native fisher communities. The fact that Burnt Church Mi'kmaq community has refused to sign so far suggests that the solution cannot be entirely acceptable to them also.

Unfortunately asymmetric treatments within or between peer communities is a time proven recipe for social instability. Such

treatments are inherently divisive. It is our view that, in this case, they are also inappropriate.

It is reasonable to assume that if such asymmetric practices were introduced into any homogenous community in the Bay area, conflict, of the kind witnessed in the past, would erupt within that community. We heard testimonies to the effect that one community turned on one of its members because they felt he was providing a commercial outlet for the native fishers' fall fishing landings. Acts of vandalism, harassment and threats to life were part of the intimidation tactics employed in this case. Thus, fishers in that community were pitted against processors despite the fact that they were members of the same community. Even though the processors' licenses are not season or territory specific, they were guilty by association. That speaks forcefully to the depth of resentment against asymmetric treatment of similar communities.

The same response would be expected to arise between members of any homogeneous fisher community, if one group within the community were perceived to get preferential treatment from the government. It is the perception of iniquitous treatment that stirs emotions and lights the torch of social discord.

Finally, it is probable that the emotional response of some non-native participants to the unrest was amplified by ethnic prejudices. The belief that racist motivation exists within the non-native communities is widely held among First Nations people in the region.

"It seems that whatever native people do, they get mad at us."

It is likely that racist sentiments motivated some individuals to break the law, but, on the basis of the information before us, we would hesitate to point the finger at one side more than the other.

Based on the previous analysis, fingering racism, as the root cause of the conflict, would be an unfortunate oversimplification. It also would constitute a misdiagnosis of the real problem that could potentially mislead the search for lasting solutions.

We conclude that a settlement introducing a divisive asymmetric treatment of lobster fishing communities in Miramichi Bay should be avoided. Scientific evidence warns against the long-term negative effect on the stock of fishing two seasons in the same area. The conservation principle, dictated by the courts, imposes a fiduciary obligation that can only be met through prudent management practices. But, perhaps more importantly at this time, the deterioration of the social climate should be avoided to allow for a cooling off period. If DFO persists with its two-season quest for an agreement with the Burnt Church Mi'kmaq community, social unrest is not only a possibility, it is a promise. We were told in several ways:

"Fall fishing just can't happen."

A two-season fishing arrangement will only serve to exacerbate an already volatile social climate.

This Panel was asked to evaluate the social climate and to recommend avenues for solutions to the existing problems. It is our considered opinion that DFO must reassess its current strategy and

refocus its efforts on the search for solutions involving the issuance of single season licenses.

If there is reason to believe that further scientific studies could shed light on the viability of two fishing seasons, without sacrificing the primary objective of conservation, research programs would add valuable information to the factual data base all parties should rely on for informed decision making in the future.

Meanwhile, it is time to adopt a comprehensive socio-economic approach to the problem. Fisheries management is no longer the only issue to resolve, if it ever was. When setting a course for a return to social peace, it may not even be the most important.

JUDICIAL AND JURISDICTIONAL CONSIDERATIONS

The Panel does not have the mandate to consider changes in the treaty rights of First Nations. It will not do so. However, it is quite apparent that lobster management disputes are the visible manifestation of a much more fundamental issue. The depth of the problem is apparent in the following official statements.

Minister Dhaliwal summarized the official government position on May 26, 2000:

> "I as Minister have the authority and responsibility to regulate Aboriginal commercial fishing. To quote the Court: *The treaty right is a regulated right and can be contained by regulation within its proper limits"*

The Esgenoôpetitj First Nation, EFN, countered as follows in a letter to Minister Dhaliwal:

> "This Fisheries Act and the Management Plan are not "offers" for any agreement with your department....."

> "EFN does not give permission to DFO to inspect or touch in any way the fishing gear of EFN fishermen."

The Preamble to the EFN Act asserts the flowing:

> "We are still inherently a sovereign people."

> "..We will not allow our inherent rights, recognized in Treaties, to be a justiciable right to be interpreted by a biased Canadian court."

This has the earmarks of a unilateral declaration of independence.

We point out those diametrically opposite views because the prospect of finding a community-based solution involving parties with such differing views of the world is not promising. These polar positions may be a temporary aberration, considering that the vast majority of the other First Nations in the Atlantic region have chosen to negotiate following the Marshall rulings. Nevertheless, the position of the Burnt Church Mi'kmaq's Chief and Band Council contained in their management plan is still the only one on the table. The position may reflect the level of exasperation that has built up as a result of Canadian society's apparent inability to undertake the reforms necessary to bring First Nations with their distinctiveness into full-fledged partnership in building a better nation for all inhabitants. From that perspective, the EFN position is a serious wakeup call. As one government official commented:

> ***"We are not going to solve problems using methods that didn't work 10, 20, 50 years ago."***

If finally, governments came up with effective and adapted methods to set the course towards the full rehabilitation of First Nations communities in this country, members of the Mi'kmaq communities we visited would certainly let out a resounding: "Amen to that, brother!" Because, at the same time as Canada was basking in the glory of its rank as the best nation in the world, its First Nations communities, taken as a group, ranked 62nd.

Another official observed;

> ***"Governments seem to have been slow to learn."***

In our view, that certainly ranks as the understatement of the year.

If our story sounds like a broken record, it is because Canada's efforts to manage "The Indian problem" are a broken record.

Nevertheless, based on our meetings with individual members of the Burnt Church Mi'kmaq community, we are reasonably certain that the official position of the band authorities does not reflect the majority opinion. There is still hope that expeditious and forceful actions to address the problems of the Burnt Church Mi'kmaq community will reward the moderate view in that community. Thus, a first step towards a reconciliation of adjoining communities and renewed trust in governments is urgently required. We don't want to create false hope, the road to full recovery will be long and difficult, and will require that government action be conceived to reflect the spirit to the courts' decisions rather than the legalistic minimal hurdles it imposes. It will also have to be inclusive of all fisher communities in the Miramichi Bay area.

A review of the underlining nature of the problem strengthens our resolve to do the utmost not to deceive the population of the Miramichi Bay area, native and non-native, one more time. A mother and fisher helper talked eloquently about the stress her family was now under. To her dismay she admitted:

"Dans les familles l'intolérance s'installe."

For her friend, also a helper, puzzlement and disbelief is expressed this way:

"Les gouvernements, y veulent-ils mettre les autochtones et les blancs ensemble en leur disant: Battez vous! pour nous éliminer?"

We trust that governments will hear the distress call of the people in this region and will not hesitate to adopt new approaches to implement social change of the magnitude created by the court rulings.

> *The ultimate in stupidity, the quip goes, is for a scientist to perform the same experiment using the same protocol over and over again expecting different results.*

A change in government protocol in dealing with the First Nations of this country is urgently needed if the next experiment is to produce different results.

SUMMARY CONCLUSIONS

The Panel on Community Relations adopted a proactive approach to its mandate. A bilingual letter was sent to every licensed fisher in the area inviting them to talk with us and giving them a full description of our mandate. We had a secretariat phoning individuals and encouraging them to meet the Panel.

The Panel devoted most of its time listening to a broad cross-section of community members. We had the privilege of hearing the views of citizens and fishers in both communities, of elders, First Nations law enforcement officers, RCMP officers, DFO personnel, representatives from the Miramichi Chamber of Commerce and the local members of parliament and provincial legislature, and municipal councils in the region. We also visited Fredericton for meetings with provincial authorities.

We met people at their convenience, morning, afternoon and evening and in the location of their choice, offices and homes. We visited their community centers, town halls, fire halls, schools, alcohol treatment centers and attended their religious services. We were seeking a deeper understanding of the issues and we were not disappointed. We spent as much time as we could and heard as many people from the Miramichi Bay communities as wanted to be heard. We found people eager to talk and be listened to. Some told us they hesitated, they had already attended many meetings but no one seemed to be listening because nothing was changing, yet they came one more time hoping this time would be the right one. In all more than 150 people came before the Panel and shared their feelings about the situation and how it might be improved.

The general conclusion that comes out of our meetings is that the situation involves much more than issues of lobster fishing and conservation. Any negotiated agreement on those issues alone will strike at the heart of communities' way of life and, equally important, will seriously affect the livelihood of individuals and families as well as their communities. This is true on both sides of the dispute. It is not surprising that emotions run deep.

The First Nations people did not talk much about the fishing issues. Their stories were those of a people dispossessed, humiliated and discriminated against. They talked about their struggle to survive systematic assimilation attempts and the price they had to pay in their personal and societal lives generation after generation. They are hurting badly. The blatant lack of respect experienced over centuries from the rest of Canadian society has insidiously colored their self-concept. Their on-going struggle to survive the pain too often leads them to substance abuse and other dysfunctional social behaviors. The lack of prospect for employment too often leads young people to abandon their education at an early age, sending whole communities in a vicious circle of no education no jobs, no job prospect, no need for education. They are merely repeating the patterns of their parents and of generations of grandparents. In general, education is not valued by parents who are themselves uneducated and unemployed. The young people of First Nations have very few role models to imitate when it comes to education. The school on numerous reserves are perceived to offer inferior education and First Nations parents who want a better education for their children have to send them to non-native school where, on a daily basis, they are confronted with their status as second class citizens. Young children who would like nothing better than to play with friends must carry the stigma

of being First Nations people. "*They are the real warriors*" we were told. Under those conditions it is hardly surprising that they don't perform according to the standards of the dominant group. Thus, saving the young people should be a priority.

In addition to the social and psychological problems, the conditions on the Burnt Church reserve are discouraging. Their water supply is unsafe, their sewer system is in an advanced state of disrepair, polluting the environment with untreated sewage, they have a fire station that is not functional and a fire truck that doesn't work. There is serious erosion of their shores. Houses are moldy, built on foundations poorly adapted to a terrain with a high water table. Furthermore, there is a serious lack of housing and overcrowding is frequent in available houses. In such conditions, the prevalent feeling that the people in the Burnt Church Mi'kmaq community have nothing to lose is only too understandable.

Skepticism as to the intentions of the government in its current attempts to negotiate an agreement on lobster fishing is hardly surprising. There is even skepticism among members of the Burnt Church Mi'kmaq community regarding the benefits the community would get if an agreement were reached. Many have commented that only a few people will benefit.

That raises a fundamental question about such agreements. It is reasonable to assume that the courts intended for all First Nations' people to benefit. Signing an agreement with a band does not necessarily achieve that objective. The claim to self-government, that is at the forefront of the Burnt Church Mi'kmaq community agenda certainly complicates the process of achieving a fair agreement for all concerned. The mere thought that conditions relating to a fair distribution of the

benefits within the community could be attached to the granting of fishing licenses would be rejected out of hand. In fact, the Band's refusal, so far, to accept the authority of the government over the management of fisheries is a major stumbling block to the search for a peaceful solution to the problem.

It appears certain that no lasting agreement can be reached without the active participation of the First Nations people of Burnt Church. It appears equally certain that solutions that don't deal with the overall socio-economic situation on the Burnt Church reserve will do little to bring about lasting benefits to that community.

The situation in the francophone and anglophone fisher community is equally problematical. The fear that a fall fishing agreement could be worked out with the Burnt Church Mi'kmaq community represents a real threat to the livelihood of all fishers because of the consequence it would have on the conservation of the stock. The non-native communities have learned, relatively recently, the benefits of conservation and have altered their habitual practice of fishing out of season. Since then, they have enjoyed a resurgence of the stock during their Spring fishing season and lobster fishing has become the mainstay of their livelihood. They are not willing to jeopardize the resource to accommodate the righting of past wrongs done to the First Nations people no matter how understanding they are of their plight. They don't feel individually and personally responsible for the actions of Canadian authorities over the years. The most they are willing to concede is that native fishers, who have a license to fish, are welcomed to do so on the same terms as they enjoy. To that end, they understand the need for a buy back program even though it will impact their communities.

Even if an agreement was reached on terms acceptable to both groups, it is becoming clearer that the approach taken to resolve the lobster fishing issue is much too narrow. In the zero-sum environment of fisheries management, the gains of one group can only be achieved at the expense of another group. The buy back strategy, transferring licenses and equipment to First Nations, comes with substantial collateral damage. The first people affected are those who worked as fisher helpers on the boats that were sold. They have been dispossessed of their livelihood. For most, fishing was the only training and skill they had and, we were told, many had been helpers for more than twenty years. Since, the economy of the region already suffers from chronic underemployment, their prospects of finding a job are virtually non existent. Some may retrain, some may move out, but it is feared the largest number will wind up on welfare.

Collateral damage will take a more insidious toll. The fishing way of life, the mainstay of the non-native communities of the Bay, may become the next endangered specie. The traditional transfer of fishing licenses within the family unit has been dealt a serious blow. A father with a license, worth around $300,000 to a government, rushing to buy its way out of a problem, can no longer afford to pass up a chance at a reasonable retirement to allow a family member to continue the tradition. The young fishers cannot afford to buy the licenses, even if they wanted to. It is expected that migration of young people out of their community will be inevitable as the changes take full effect. The decline and impoverishment of whole communities is a probable outcome of the current government strategy. Thus, it seems that an unintended consequence of the government's attempts to conform to the courts' rulings on fishing rights will be a displacement of a social problem from one community to the other.

Our analysis also revealed that the difference in earnings between the Burnt Church Mi'kmaq community and the neighboring fisher communities is not great. That is a somewhat surprising result. However, when the tax treatment differentials are taken into account there is not much to chose between the two groups. Both groups rely heavily on transfer payments to augment their income. That, economically speaking, is an indication that both groups live at the margin. The fact that they share a similar economic standard of living should be a fertile ground for mutual understanding, neither can afford serious disruptions to their earning stream. It also suggests that both will be ready to defend their precarious position in the dispute. Perhaps an awareness of their similarities will facilitate the search for mutually acceptable solutions.

The Panel is also struck by the inefficacy of the fragmented approach adopted so far by governments and their agencies. The Department of Fisheries and Oceans' mandate is too restricted to adequately deal with a situation that extends beyond mere fishery management issues into the social fabric of communities. The socio-economic conditions on the reserve are a man-made disaster brought about by the administration of the Indian Act. It has created the conditions that have brought the First Nations people to the point where they are justified in thinking they have nothing to lose. Now that the courts have recognized their treaty and ancestral rights, it is not surprising that they would wish to exercise them forcefully. Yet the Department of Indian and Northern Development seems to be absent from the scene. Any solution involving a community development approach will have to bring them back in. DFO may be an unwitting scapegoat in this situation, it does not have the mandate to deal with all the issues involved in a social change of the magnitude called for as a result of the courts' decisions.

Unfortunately, DFO's attempt to take the lead manager's role in this situation has resulted in a loss of credibility and trust for all government interventions. The communities observe results of government actions and do not care about the partition of the bureaucratic turf. For example, there is evidence that even in the law enforcement area, the RCMP had to wait for a request from DFO to intervene. People don't understand when groups of police stand around while unlawful activities are taking place in full view. To the native population that unfortunately spells racism.

It is clear that an effective and unified command structure should be put in place whenever situations such as those witnessed in the Miramichi Bay occur. While the situation may not carry the same traumatic impact as the September 11 events, it is remarkable how quickly a crisis management structure took over in that situation, in sharp contrast to what happened in the Miramichi Bay area. Yet, it is unreasonable to assume that DFO had the power to act differently than it did.

Finally, the conclusion that the situation was mishandled is difficult to avoid and while a single department may not deserve the full blame for what happened, governments cannot escape that responsibility. It is urgent that DFO refocus its negotiating strategy with the Burnt Church Mi'kmaq community. The science is on the side of the non-native fishers, so are the courts, which have made conservation and the impact on other communities sharing the resource key considerations in working out agreements. If that were not enough, the virtual certainty of further social unrest should be sufficient to bring about a change in course. It would be unfortunate, if administrative expediency resulted in the criminalization of whole communities of normally law-abiding citizens.

THE NEXT STEP

"When the bay freezes up the problem goes away."
Law enforcement officer

"When the cameras left, we went home and didn't talk to each other."
An Elder

"We were lucky no one lost their lives."
"What about the next time?"
Fishers

Canadian society was transformed with the inclusion of the Charter of Rights in its Constitution. One of the results is that communities In the Miramchi Bay area must now accommodate the rights of Canada's aboriginal peoples. The difficulties come from the fact that a new economic and social balance must be struck in a resource-based economy of limited capacity. In particular, the zero-sum environment of the fisheries industry dictates that the gains of one group will be obtained at the expense of another group. Thus, accommodating the First Nations people in the fishing industry can only be achieved by displacing some non-native fishers.

Typically, tradition runs deep in the non-native fisher communities and changes are not easily accepted, much less welcomed. Under the best possible scenario, introducing the changes dictated by the Sparrow and Marshall rulings would have been difficult. Unfortunately, Governments were unprepared for the Supreme Court rulings. In their haste to catch up, they adopted questionable strategies for introducing Aboriginal fishers to the fishing industry. The communities most affected by their actions were left out of the consultation and decision making process. In fact, non-native communities are even more critical of the process of

change than of the nature of most changes introduced by their governments. For example, the buy back policy, the centerpiece of government intervention, is not hotly contested, despite the permanent impact it will have on the employment situation in the non-native communities. However, the negotiation tactics with the Burnt Church Mi'kmaq community is strongly criticized for not being sensitive to the concerns of non-native fishers over conservation.

The Panel was impressed by the degree of untapped goodwill existing in the non-native fisher communities towards the First Nations people of Burnt Church. They empathize with the subsistence living, which is the lot of most people on the reserve, because, not so long ago, they were experiencing the same kind of hardship. They hope something can be done to allow their neighbors to share the benefits that come with regular employment and a healthy community life, where families can raise their children with the expectation of a quality education, a nurturing environment and above all the prospect of earning a decent living.

The non-native communities have no difficulty wishing for others what they would like for themselves. The tacit denial of rights that characterized Canada's past relationship with Aboriginal peoples seemed absent from the minds of the non-natives we met. The Miramichi region has a long history of people helping each other to survive, dating back to 1755 with the deportation of Acadians. It is still common knowledge in the francophone communities that, without the help of the Aboriginal people of the region, few Acadians would have survived the hardships they had to endure in their efforts to escape the pursuing British troops.

"I therefore, in the evening of the 17th in obedience to your instructions, embarked the troops, having two days hunted all around us for Indians and Acadians to no purpose, we however destroyed their provisions, wigwams and houses, the church which was a very handsome one built with stone did not escape. We took numbers of cattle, hogs and sheep, and three hogsheads of beaver skins, and I am persuaded there is not now a French man in the River Miramichi, and it will be our fault if they are ever allowed to settle there again, as it will always be in our power of two or three armed vessels capable of going over the barr, to render them miserable should they attempt it". (Louisbourg 24th September 1758- letter of Colonel James Murray to Brigadier General Wolfe)

To this day, a small river bears witness to the past events reported by Colonel Murray. It is called "Rivière des Cachés" and the reserve gets its name from the church that was burnt. The bonds between the communities run deep. Over the years, they have been strengthened through inter-marriages. Mixed blood is not uncommon in both communities.

The Panel witnessed genuine empathy within the communities and believes it is a solid foundation to build on. The people in all communities in the Miramichi have a deep yearning for a return to peaceful community relationships. They have been maligned by the winds of social change, wiped to hurricane force in the last three years, by the precipitous actions of governments and their agencies. In their rush to right more than a century of neglect of aboriginal people, governments have failed to effectively inform and involve the non-native communities in the process of change. Their choice of strategy failed to

incorporate the views of the people most affected. Not surprisingly, people resorted to unusual tactics to vent their displeasure at events that were, and still are, perceived to threaten their livelihood.

The Panel is aware that its mandate does not carry executive powers. But, it would be a major irritant to the communities who entrusted us with their message and their hopes, if governments treated this report as just one more piece of information to be considered in due course by their bureaucracies.

If it needs to be repeated; there is a crisis in the Miramichi Bay area! It will not go away by itself. It calls for a crisis management response.

Social unrest is simply the outward manifestation of much deeper community concerns. It would be a mistake to think of crisis management merely in terms of law enforcement. In fact, the show of force during past events did nothing to appease the situation. Paradoxically, it became an invitation to the radical fringe looking for media attention and a legitimization of their provocative actions.

ONE CONFLICT, TWO RATIONALES

The most difficult hurdle to overcome in the search for acceptable solutions is the existence of two unrelated agendas driving the opposing groups. The non-native communities view the situation strictly as a fisheries management problem. They are concerned that their livelihood is being threatened by the introduction of a second fishing season in LFA 23. They have learned over time that conservation pays and, **in the Miramichi area, conservation means a ban on Fall fishing**. As a result, they have gradually, perhaps even grudgingly, abandoned the practice of catching lobster out of season. They have been rewarded by

an increase in stock and in landings during the spring fishing seasons. Lobster is now the principal source of income for professional fishers. Other species round out what most would call a "moderate living".

On the other hand, the authorities of Burnt Church reserve are working to a different agenda. The Sparrow and Marshall rulings are being used as strategic bargaining tools to gain the maximum political autonomy possible. The ideal outcome for them would be if the Canadian government reinstated their status as completely independent political entities. Chief Coon Come's declaration: "I am not a Canadian" captures the essence of that point of view. The Management Plan, submitted by the Esgenoôpetitj First Nation, is predicated on their rights as a sovereign nation. In the grand scheme of Aboriginal political strategy within Canada, the situation in Burnt Church is just another skirmish. Collateral damages and even human casualties may be perceived as an unfortunate by-product of nation building.

The Panel's mandate does not extend to considerations of the kind the Band Council of Burnt Church would like to discuss. We have to seek solutions within the legal and constitutional framework currently in place in Canada. Without offering an opinion on the merits of the current situation, we are compelled to observe that the Burnt Church Mi'kmaq community does not have the power it claims in a unilateral declaration of independence. Therefore, it is unlikely to resolve its fishing rights in the Miramichi area outside the existing legal framework governing Canadian society.

The testimony of the First Nations people was preponderantly in favor of a peaceful solution to the fisheries issue. Armed squads and factions on both sides are as frightening to them as they are to the non-native

communities. The noisy machines of war frightens everyone because, in an emotionally charged situation, everyone understands that they are one trigger pull away from the loss of human life which could take the confrontation to its ultimate limit: the militarization of the conflict.

The Panel is convinced that the Chief and the Band Council have the power to step back from the brink and deal strictly with the fisheries issue. Doing so would immediately neutralize the ferment of social unrest and confrontation that is just one more Fall fishing season away.

KEY ASSUMPTIONS

1. **The Panel's search for feasible solution is predicated on the primacy of the current legal framework.**

   It is within the current legal framework that the solution set will be offered. We are concerned that the Government of Canada's position with respect to aboriginal self-government is being perceived by some First Nations communities to extend to total political independence. It may be that the Canadian government does not see the necessity of affirming its resolve to retain its territorial integrity. To the extent it chooses silence and/or ambiguity, it leaves the door wide open for those who would wish to fragment the country.

   If indeed, there is a reasonable basis for the claim of First Nations independence, then the government should proceed with a resolution of the issue. It is unreasonable to expect Canadian communities to become unwilling pawns in a struggle for political power. Unfortunately, the non-native communities of the Miramichi Bay Area feel they have been singled out to expiate the presumed sins of the country on that issue. Yet their strongest aspiration is to continue to

earn a living in a resource sector that has become a way of life for them.

2. **The corollary assumption is that the laws of the land should apply to all its citizens equally, regardless of their status in life.**
   It may be argued that Canadian society has not only condoned but also actively encouraged an asymmetric application of laws to its aboriginal population in the past. The need for redress of the situation is at the heart of the recent Supreme Court rulings. However, the pendulum swing should not exact retribution on the other communities. As we understand it, the aim is to make room for the aboriginal people to live on an equal footing with other Canadians, not to dispossess one group to accommodate the other.

3. **Another major assumption is that no agreement should be entered into without the knowledge of all stakeholders.**
   A brief presented by the RCMP captures the essence of the problem of social change and social management It differentiates between the efficiency and the effectiveness of an intervention. Effectiveness is the surest way to achieve lasting results and it involves participation of the stakeholders in the search for, as well as the implementation of, mutually acceptable solutions. Up to now, concern for efficiency more than for effectiveness seemed to have guided government action in its response to the court rulings. Achieving a lasting solution, with the Burnt Church Mi'kmaq community, calls for the effective inclusion of the views of the non-native fisher communities. They are also key stakeholders in the dispute, their needs cannot be ignored.

In earlier discussion of DFO's conduct, we concluded that the department must pull back from a strategy that would introduce a

second fishing season within the Miramichi Bay area (LFA 23). The acceptance of a second season for the Burnt Church Mi'kmaq community is unanimously rejected by surrounding non-native communities and if their views remain unheard and unheeded, their past behaviors will unfortunately be repeated.

A NEW START

The Panel believes there is a need to wipe the slate clean in the search for solutions that will see the return of social peace in the Bay area. This will call for clarity of purpose and leadership on the part of governments. The following actions should be forthcoming.

COMMUNITY HEALING

After hearing the testimonials of more than one hundred and fifty people, the Panel considers that government actions, aimed at responding to the Sparrow and Marshall rulings in the fisheries industry in the Atlantic region, are the primary cause of the social unrest in the Miramchi Bay area. We believe that the search for a lasting solution must start from a clean slate. To this end, the government must initiate a communal healing process to demonstrate that it is willing to accept its share of responsibility for what went wrong in the Miramichi Bay area. In particular, three areas deserve immediate attention: forgiveness, compensation and reparation.

FORGIVENESS

The deterioration of the social climate is primarily attributable to the actions governments took to integrate First Nation fishers of Burnt Church in the fishing industry of Miramichi Bay. It may be argued that the action must have been reasonable since a peaceful settlement was reached with thirty-two out of thirty-four First Nations communities. It is our understanding that in all those cases, the agreements involved the right to fish in the single season allowed in the fisheries management plan.

The situation, in Miramichi Bay, is different. DFO allowed a second fishing season to take root under the guise of food, social and ceremonies. Native fishers challenged the legitimacy of enforcement policies. Under pressure, DFO gradually pulled back and allowed the practice of fishing out of season for commercial purposes to go unchecked. Those acts of commission and omission led the non-native fishers to lose faith in DFO's willingness and/or ability to protect the fisheries. Their resolve to protect their livelihood lead to the widely publicized events of social unrest witnessed around the world. Unlawful activities took place, and a large number of charges were laid. The courts now have started to process the backlog.

We believe that a conciliatory gesture on the part of government is necessary to wipe the slate clean in preparation for a new start.

RECOMMENDATION 1

The Panel recommends that all pending charges arising from the troubles in the Miramichi Bay fisheries conflict since the Marshall rulings should be stayed for a period of two years and provided the accused show good behavior during that period, the charges should be withdrawn.

There are ample extenuating circumstances to justify our recommendation; precipitous action, lack of consultation with the communities affected, failure to enforce existing conservation regulations and less than exemplary crisis management practices when social unrest broke out, to name a few. Fortunately there was no loss of life and while damage to property was sustained, it must be understood that people on both sides of the dispute were experiencing unusual stress made even worse by a major breakdown in communications between governments and the communities.

COMPENSATION

Fishers incurred substantial property losses that they can ill-afford to sustain. As a second gesture of goodwill and reconciliation aimed at wiping the slate clean, the government should compensate for the material losses sustained during the periods of civil unrest.

RECOMMENDATION 2

The Panel recommends that a program be instituted immediately to compensate for the material losses sustained to boats and fishing gears during the confrontations of 2000 and 2001 in the Miramichi Bay area.

REPARATION

The buy-back program, the cornerstone of DFO strategy for negotiated settlement with First Nations communities, has created casualties already. The Panel is concerned that no adequate planning and, more importantly, no compensation programs for the fisher helpers who lost their jobs, were initiated to ease the pain of transition. The government engaged in what amounts to constructive dismissal and the Panel believes that this constitutes an unfair practice. Departmental officials intimated to us that it was the responsibility of the captain to share the amount received in the buy back program. We do not concur.

The Government initiated and is responsible for the program that resulted in a loss of jobs in the non-native communities. Since the licenses as well as the boats and the fishing gear were purchased and transferred to the First Nations communities, and since one of the avowed aim of the program was to create jobs for them, it was

predictable that the captains and their helpers would lose theirs. The captains were rewarded for his losses but not the helpers.

Helpers not only lost their jobs, but because of the endemic unemployment situation in the region, they also lost the ability to qualify for employment insurance, on a regular basis, a major part of their yearly revenue. The Human Resource Development Department did not even step in with a special program to retrain the helpers, a striking proof of the government's uncoordinated approach to the fundamental changes it was imposing on the fishing communities. As things stand, fisher helpers have been left to fend for themselves. This treatment contrasts with the program put in place by DFO to train new cohorts of native fishers. Again, the asymmetric treatment of the two groups rates low on the fairness scale. The non-native communities perceive government action as inequitable and unfair in this case. It feeds the negative stereotyping of First Nations people within those communities, fueling the tensions between the two groups.

The Panel is convinced that a reparation program is an important step in the healing process for the non-native communities. A start must be made with the compensation of the fisher helpers. We believe that the appropriate standards for a compensation program are those commonly applicable to constructive dismissal cases.

RECOMMENDATION 3

The Panel recommends the immediate implementation of a displaced fisher helper compensation program. As part of this recommendation, the government:

- **Should initiate the program quickly by completing a list of beneficiaries by the end of May 2002.**

- **Should advise the beneficiaries of their eligibility and inform them of the basis that will be used to establish the amount of the compensation;**
- **Should compensate the fisher helpers as soon as their employment records have been ascertained.**

The three preceding recommendations are designed as a gesture of goodwill on the part of a government seriously committed to finding lasting and equitable solutions to the crisis in the Miramichi Bay fisheries. This should go a long way to facilitate a fresh start with the fisher communities of the area.

COMMUNITY RENEWAL: A COMPREHENSIVE APPROACH

The Burnt Church Mi'kmaq community's need to heal involves addressing deeply rooted grievances. The magnitude of the problem is such that we can only outline the nature of the systemic changes required.

Our mandate relied on a community relations process for finding solutions to the lobster fishing flash point that has soured community relations in the Miramichi Bay area over the past several years. The survival of a specie is at the center of a social storm that already has cost the government dearly and promises to cost more before peace is restored.

However, listening to communities revealed much more than a fishing problem. The irony of the situation is that the more fundamental problem has very little to do with the treatment of a specie and much to do with the treatment of a people. One lobster may fetch anywhere from $4 to $10 on the market, but what value should we put on the hundreds of wasted lives among the First Nations people of Burnt Church. We chronicled their story in the first section of this report. We identified short-term reconciliation measures to wipe the slate clean in order to facilitate a new beginning. We would be negligent, along with the rest of Canadian society, if we did not address specifically the plight of the Burnt Church Mi'kmaq community.

The Panel is convinced that no lasting social peace will be possible as long as life on the reserve is not transformed. It is the living conditions on the reserve that every now and then boils over. In the past few decades salmon fishing flared up as a social issue, then it was the tax status of First Nations, wood harvesting generated frictions and now

lobster gets the distinction. Each time governments struggled to find symptomatic relief but, like a cold virus, First Nations protests keep coming back.

We were appointed to go into the communities and to feel the pulse of their discontent. We expected to hear fish stories and we did in the non-native communities. But in the First Nations communities we heard people stories. Desperate people stories with a recurring theme of loss of identity and self worth. People that don't expect to be treated with respect by the rest of Canadian society and that have more than a century of evidence telling them it is not forthcoming. They can truly believe that they have nothing to lose. That is why every now and then they rebel.

Unemployment is indecently high, hovering around 80%. The youth population is raised in families that repeat the cycle of school drop out, under-education, unemployment and frustration.

The Burnt Church reserve reputedly harbors one of the poorest First Nations communities in Canada. The Band is under third party management; its water is unsafe to drink; its sewage system is run down; it has a nice fire hall but no fire truck. It suffers from overcrowding in run down and moldy houses built on inappropriate foundations because of the high water table. A new band administration building is half complete and has been so for the last two years; its shores are eroding and the buses that transport young children to off reserve schools are overcrowded.

The Burnt Church Mi'kmaq community is an ideal candidate for an experiment in community renewal.

That community is not hopeless but bringing it back to acceptable standards will challenge our governments and institutions. In his first address to the nation, incoming president John F. Kennedy challenged his nation to put a man on the moon within a decade. He backed his vision with resolve. He created NASA and gave it the power and the resources to undertake the task. Americans were the first and only people to walk on the moon proving that where there is a will there is a way.

We believe that Canadian society has the means and the will to change its approach to the "management of aboriginal people". We believe that Burnt Church Mi'kmaq community challenges Canadians to show that they can muster the creativity, the know-how and the resources to turn that reserve into a model First Nations community within ten years. The renewal project should draw inspiration from the need to:

'Save the Youth of Burnt Church.'

We don't underestimate the challenge. The fact that a Burnt Church exists at all is a monument to the ineptitude of the current system of support for aboriginal people all across Canada. New approaches are needed.

Crossing the Lines and Breaking the Rules

The Panel's discussion with the Department of Indian and Northern Development, DIAND, gave a preview of the need for change. We were told that DIAND is just one of the government departments and agencies involved in providing services to First Nations communities. Other key players include Health Canada, The Central Mortgage and Housing Corporation, Human Resource Development Canada and a miryad of

provincial agencies. For example, child and family services alone dispenses its services through eleven provincial agencies. If children go to off reserve schools, they fall under the provincial department of education. The DIAND representative estimated that Band administrators spent 80% of their time working through the bureaucratic maze and 20 % actually doing something.

We know that Government bureaucracies at all levels have little direct involvement with First Nations beneficiaries and this leads us to ponder how much of the large budgets voted by governments for the Aboriginal people actually finds its way to the intended beneficiaries.
The DIAND representative suggested that a "single window" would alleviate the problem. We will build on that suggestion.

Task Force

We believe that the first place to start is with the administrative structure providing the resources to the First Nations. We will assume that the current structures will be maintained. We want to adopt the Task Force concept because of its flexibility. The members of the task force remain employees of their unit of origin. Their appointment is for a specific duration. While on assignment, they report directly to the Executive Director of the Task Force, not through their normal hierarchy.

The Burnt Church Community Renewal Task Force has a special mandate. It will be systemic in scope, community needs focused in approach and mentoring in process. It will be the source of expertise to ensure the quality of the outcome, but to the greatest extent possible, it will transfer the knowledge and skills to members of the First Nations community. Community renewal involves capacity building not only in material support systems but also the upgrading of intellectual capacity,

so that the community will retain the knowledge and skills for continued improvement once the initial objective of the Task Force has been attained.

The staffing of the Task Force should come through the secondment of individuals by their departments. Initially, experts from DIAND, Health Canada, HRDC, an expert in First Nations education, an expert in construction and public works project and the RCMP should be assigned to the Task Force. Given the role of DIAND, the lead manager could come from its ranks.

The Task Force should be given six months to produce a comprehensive community renewal plan. Among the issues that should be specifically addressed are the following:

1) QUALITY EDUCATION FOR THE MI'KMAQ YOUTH

The first mark of respect owed the First Nations youth is to allow them to access knowledge using their own language. This can be achieved through the development of a kindergarten and primary school program in the Mi'kmaq language that would prepare the First Nations children to achieve provincial standards. Over time, educators should be challenged to get their pupils to the upper tier of academic performance in the province. To avoid delays, the development of the capabilities could take place concurrently as the first cohort advances through the program so that at the end of the eighth year of the project, the first cohort would have graduated.

The quantitative measure of success would be of two kinds. First, it would measure capacity building. The aim would be to recruit and/or train Mi'kmaq teachers in sufficient numbers to offer the full program

and to develop the teaching material for the whole program in the Mi'kmaq language. Second, it would measure academic performance. The aim would be to graduate students fluent in their language and testing on par with the average for the province on academic subjects.

Equally important from a community point of view would be the qualitative measure of success. It would manifest itself when First Nations parents would consider it a priority to send their children to their First Nations community school.

Those results should be achieved within ten years.

Every effort should be made to recruit a Mi'kmaq person to head the Primary Education Project. During the planning phase, the Project Manager would be well advised to study experiments currently underway in other First Nations communities.

But, the very first step will be to assemble a small group of Mi'kmaq parents from the Burnt Church Mi'kmaq community to advise on the best way to implement such an ambitious undertaking. This action spells respect, a commodity in great demand in that community. Hopefully, it will be possible to also involve the person responsible to the Band Council for education.

However, the funding for the experimental program should not come from the standard allocation to the Band for education. A special budget and special accountability thro..gh the Task Force should be established for the full experimental program cycle.

2) COMMUNITY PHYSICAL INFRASTRUCTURE RENEWAL

The existing physical infrastructure on the Burnt Church First Nations needs to be upgraded. This component of the systemic approach to community renewal aims at bringing the living conditions in the Burnt Church Mi'kmaq community to Canadian standards. However, because the whole approach is community focused, the first requirement will be to develop the communal skill set to undertake the project. This will involve teaching trade skills in construction and public works primarily to school drop outs in the 18 to 35 year range.

While the medium term objective is to upgrade Burnt Church's physical infrastructure, the long-term goal is to develop core competencies within the community.

It would be preferable, if the experts joining the Task Force came from First Nations communities. However, the guiding criteria for recruitment of the project manager should be competence to deliver a quality physical infrastructure to the Burnt Church Mi'kmaq community. As was the case for the education project, maximum community involvement should be sought through the creation of an advisory group chosen from the community.

The Panel already has been supplied with a shopping list of the needs, as well as rough estimates of the cost of infrastructure upgrading. Those could be used as a starting point in the planning process. This component of the Renewal Project should also be funded separately through specific budget allocations and accountability through the Task Force. The panel believes that the work plan should be phased over a five-year period.

3) Community Wellness Project

The health, family and social welfare project should develop the capacity to intervene effectively to improve the wellness quotient of the community. The project is predicated on the assumption that community renewal also involves addressing family and personal problems that impinge on the ability of individuals to find joy in living peacefully with themselves, their family and their community. This is what we understood when Elders talked about spiritual healing.

This component of the Community Renewal Project also involves capacity building. Once a plan has been developed, the first step would be to recruit and/or train Mi'kmaq speaking caregivers. Language skills are particularly important when dealing with personal problems. People with problems have enough difficulties explaining their needs without having to do so in a second language. The aim of this intervention is to effectively deal across a broad spectrum of problems: the provision of family counseling, of safe houses for battered women and children, and the encouragement and support for the treatment of alcoholism and drug abuse within the community.

The specific objective would be to decrease the incidence of such problems in order at least to bring them in line with Canadian averages.

Capacity building should be completed within five years and should be funded as a special project. The performance objective of reaching the Canadian average will probably take longer because of the deep-rooted causes within the community, however, it would be reasonable to achieve the objective in most areas within five years. Of all the components of the Community Renewal Program, success with this component will benefit the most from effective community involvement. Success in this aspect of

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community life is also vitally important to other segments of the Renewal Program, particularly the educational program. Children will certainly do better if they come from a supportive and peaceful family environment.

RECOMMENDATION 4

The Panel recommends the establishment of a Community Renewal Project to be managed by a special Task Force regrouping relevant expertise seconded by the key service providers and funded separately. Its mandate will be to build a model First Nations community on the Burnt Church Mi'kmaq community within ten years. In order to fulfil its mandate, the Task Force must develop the appropriate intellectual capacity for each of the following components:

- **Develop a primary school program in the Mi'kmaq language with qualified Mi'kmaq speaking teachers;**
- **Build a health, social and family support system staffed by qualified Mi'kmaq speaking care givers:**
- **Upgrade the physical infrastructure of the reserve to Canadian standards.**

Two other elements are required to round out the renewal program; community law enforcement and a complaint handling mechanism where individual members could go when they feel aggrieved by the treatments received in dealing with band and/or government administration. However, the nature of these components cannot be implemented for a single community. Nevertheless, they are vital to the success of the renewal project and we have chosen to include them as separate but related recommendations to the Community Renewal Program.

COMMUNITY LAW ENFORCEMENT

One of the prized features of self-government is the ability to have an indigenous law enforcement capability. However, we were told that several problems plague the aboriginal law enforcement officer. They are inadequately trained, poorly equipped and poorly paid for the responsibilities assigned to them but more importantly they are totally at the mercy of the Band Council.

The Community Renewal Project calls for an improvement in the law enforcement apparatus. The aim is to develop the sense of citizenship responsibilities and accountability based on traditional values of the Mi'kmaq culture. The transition to a law abiding community, where members don't have to worry about their personal safety and that of their children, is an achievable goal within three to five years in a small community such as Burnt Church First Nations. But, as with the other components, it will start with building credible First Nations law enforcement capabilities.

Several aspects of the current practices will need to change. The first is the method of training. There is a need for standardized training program for a First Nations law enforcement contingent. The second is the need for a comprehensive remuneration package for professional First Nations law enforcers. There are risks in the profession that must be taken into account for the protection of the enforcer and his family and for the peace of mind of the law enforcers. The third is the separation of law enforcement and political power.

The Project Manager for this component should be a First Nation person with extensive experience in policing.

Special funds should be provided for the Training of First Nation law enforcement officers.

The challenge will be to reach policing agreement with the different First Nations communities so they will welcome an independent police force in their midst and will pay for professional law enforcement services.

RECOMMENDATION 5

The Panel recommends th hment of a First Nation law enforcement academy and the training of an autonomous First Nations police force.

GOVERNANCE CAPACITY BUILDING

The Panel was told that nineteen out of the thirty-four First Nations communities in the Atlantic region are struggling with the administration of their bands. Governance is currently the favorite topic of discussion among First Nations. There is a realization that the existing governance structure and processes are flawed. The subject is complex and may take time to resolve. Yet the problems are real and exist now. Something needs to be done.

We see three avenues of intervention capable of improving the situation for members of First Nations communities and particularly for those of the Burnt Church First Nations. The first involves a training program in community needs focused management for the Band Council. The program should stress fiduciary obligations and should substantially upgrade the level of Band financial management practiees. The second involves a systematic community information program, under the auspices of DIAND. The objective would be to insure that First Nations members know what programs are funded for their benefits and to what extent. The third element would involve the creation of a citizens complaint bureau, an ombudsman, to which aggrieved citizens could turn for redress should they be subjected to unfair treatment by their leaders.

RECOMMENDATION 6

The Panel supports the notion of an aboriginal ombudsman office as a way of providing a complaint mechanism for First Nations people who feel aggrieved by the actions of their Band Council.

WHARF FACILITY IMPROVEMENT

The Panel is informed that there will be significant overcrowding at the Burnt Church wharf when an agreement is finally reached that will provide the licenses, boats and fishing gears to Burnt Church fishers. We are also informed that the current location of the Burnt Church wharf was selected because of its natural topographical characteristics. It is the best place to build a wharf in that area of the Bay.

There are only seven non-native fishers using the existing wharf and with the addition of native fishers pursuant to a fishing agreement, native fishers would greatly outnumber the non-natives. This should bring about a change in the membership of the port authorities and will be a good test of functional community relations. The two communities would share the same facilities. We have been told by the Concerned Citizens Group of Burnt Church (non-native), that the wharf is more than a place to dock boats, it is a community center during the Summer months. Obviously, any future plans regarding the wharf should accommodate that community purpose. We would hope that as more First Nations fishers use the facility and take part in its management, the port facilities will also become a place of gathering for their families, a place where the two communities could rekindle the relationships they enjoyed in the past.

RECOMMENDATION 7

The Panel recommends that the existing Burnt Church wharf be upgraded and expanded to accommodate the increasing fleet of First Nations fishers; that they be invited to appoint members to the port authorities to take part in the shared responsibility of managing the facility for the benefit of both communities, and

that the responsibility for the wharf project come under the purview of the Task Force.

The principal challenge of the Task Force will be to design the comprehensive Community Renewal Plan sketched previously. It will be called upon to execute the plan with maximum community involvement and community capacity building. The Task Force will operate as a team and pool their knowledge of the functioning of the government apparatus to acquire the necessary financial resources to successfully meet their objective of transforming the Burnt Church Mi'kmaq community into a model First Nations community in Canada.

FISHERIES MANAGEMENT

The Panel is convinced that the centerpiece of a short-term strategy to avoid further conflicts starts with the implementation of a credible lobster fishing management plan for LFA 23. In the previous plan, the licenses did not differentiate the purpose of the fishing activity. No distinctions were made between personal use and commercial fishing. However, the Sparrow ruling introduced the notion of the food, social and ceremonial, FSC, fishing. In doing so, it intended to narrow the scope of the fishing activity, otherwise there would have been no need to differentiate between commercial and FSC fishing. We believe that the differentiation must now be addressed specifically in any new plan going forward since that right is reserved for First Nations.

We reviewed the Management Plan submitted by the Burnt Church First Nations. We have neither the time nor the mandate to evaluate its technical merit. However, we observe that it is predicated on the assumption of the sovereignty of the Esgenoôpetitj First Nation. It is our understanding that the government of Canada has not acceded to this or any other unilateral declaration of independence. Therefore, in keeping with our working assumption, we can only consider solutions that conform to the existing legal framework.

In the absence of a new plan that would garner the support of all fishing communities of the Miramichi Bay area, the DFO fisheries management plan based on a single Spring season lobster fishing remains the last valid plan on the books. The Panel thinks it would be wise to step back and to follow that plan until such time as a new one has been negotiated.

The Panel is conscious that the Burnt Church First Nations political cadre undoubtedly will look upon this option as a return to the status

quo. That is only partially true. It is true to the extent that the fall fishing season would continue to be closed to all fishers as a conservation measure. That was the situation prior to the court rulings. However, nothing would prevent DFO from negotiating agreements that would provide the First Nations people of Burnt Church with licenses, boats and riggings giving them equal access to multi specie fishing in the Miramichi Bay area including of course, lobster fishing in the Spring. Indeed, DFO should redirect its strategy to achieve such negotiated settlements. **We reiterate that the fall season is not negotiable unless a consensus is reached.**

There is skepticism surrounding DFO's enforcement record over the last three years. The MFU told the Panel that realistic estimates put the landings at between 900,000 and 1,000,000 pounds yearly. They stated that in the three years since the Marshal decision between 3,000,000 and 4,000,000 pounds have been harvested under the so-called food, social and ceremonial licenses issued by DFO. The MFU states that it comes by those estimates from various sources including talks with local processors.

Unfortunately, DFO does not have reliable statistics on the landings of First Nations fishers since the Sparrow and the Marshall rulings. They counter with unsubstantiated estimates of their own ranging from 300,000 to 500,000 lbs. landings per year.

The relative significance of the fall fishing activities by Burnt Church First Nations fishers can be assessed. Demographic data report a population of around 1,300 on the Burnt Church reserve. Using DFO's estimates, it would mean that each man, woman and child on the reserve would have had 230 lbs. (300,000/ 1,300) of lobster for their food, social

and ceremonial needs. MFU's estimates would yield 690 lbs. on a per capita basis (900,000/1,300). We find it difficult to conceive that the landings were strictly for the purpose intended. Therefore DFO did not enforce the exploitation of the licenses it issued for food, social and ceremonial purposes. It gives credence to those who claimed that DFO turned a blind eye to practices carried out under the guise of a right to FSC fishing by both native and non-native fishers.

The Panel is not in a position to validate those estimates. However, we are concerned that DFO, whose responsibility it is to exercise controls over fishery, is not in a position to present hard data to substantiate its own numbers or to refute MFU's claims. The field is wide open for speculations. Meanwhile the search for a solution to the crisis is stalled.

In the absence of demonstrated enforcement capability, the non-native fishers argue that fall fishing is impossible to control. The only way to insure that FSC fishing will not continue to be a front for a second commercial fishing season in LFA 23 is to prevent it.

On the basis of the scientific evidence at our disposal, **we conclude that DFO would be jeopardizing its fiduciary responsibility for the sound management of the resource, if it were to allow a commercial Fall fishing season in LFA 23.**

The same conservation argument justifying the ban of the Fall fishing season for all commercial fishers (it should be noted that there were native fishers in the group) has not been invalidated by the court rulings. In fact, a strong case can be made that Marshall two provides unequivocal support for that practice because of its demonstrated efficacy as a conservation measure. Furthermore, there has been no

serious scientific research to invalidate the conservation measures in place before the rulings took effect. It is worth restating that the Marshall two ruling recognized the primacy of conservation measures for all fishers, natives and non-natives.

The Panel concludes that preventing commercial Fall fishing in Miramichi Bay is the only reasonable course of action at this time. This is based on the necessity to subsume management practices to the conservation imperative. It is consistent with the available scientific knowledge supporting single season fishing and the demonstrated inefficiency of current enforcement practices to control limited fishing in any season.

This conclusion should not be construed as impinging in any way on the negotiation process currently underway on First Nations Treaty rights, since the mandate given this Panel "*does not have the scope to define or limit aboriginal rights*" (page 3 of this report).

FOOD, SOCIAL AND CEREMONIAL FISHING

We recognized the wish of First Nations people to have unrestricted access to the resource for food, social and ceremonial purposes. We are aware that First Nations communities hold social events and Pow-Wows during the Summer months at a time when the commercial lobster fishing is closed in LFA 23. We believe that those needs can be satisfied through a judicious use of inter-area fishing licenses that would respect the official fishing seasons.

RECOMMENDATION 8

The Panel recommends the return to the existing lobster fishing management protocol based on a single Spring fishing season in LFA 23 and the confirmation of the exclusion of commercial Fall fishing as a primary conservation measure. This conservation parameter should prevail in any signed agreement with the Burnt Church Mi'kmaq community.

EFFECTIVE FISHERIES ENFORCEMENT

The challenge facing DFO will be to regain control over the lobster fisheries in the Miramichi Bay with enforcement practices that will be carried out in accordance with the only legitimate regulatory framework in place at this time.

The first step in a return to normalcy in the Miramichi lobster fisheries is a return to a solid base from which to restart an inclusive negotiation process involving all fisher communities. This will require resolve, transparency and efficacy on the part of DFO.

ENFORCEMENT: A COMMUNITY SENSITIVE APPROACH

The Panel understands the First Nations community will probably see the return to the former management plan as a retrograde step. They have been favored by lax enforcement practices during recent years. A change in regime will require an enforcement program predicated on the principles of clarity, firmness and understanding.

- **Clarity**

  The DFO enforcement policies for the Fall fisheries should be the object of a detailed community information program to start immediately. Communities should be informed well in advance of the management approach going forward. The standards of enforcement should become common knowledge among native and non-native fishers alike. The announced plan should become the basis for DFO's accountability to the fisher communities. To that end, DFO should hold weekly briefing sessions, or more frequently as required, to report on its activities to the communities and to deal with concerns as they arise. This should be done in all communities. In return for

the adoption a community based approach to enforcement, communities should be asked to refrain from provocative actions.

- **Firmness**

  One of the key characteristics of an efficient and effective law enforcement program is that it must be seen to be fair. DFO cannot afford to look the other way as they have reportedly done in the past several years. Enforcement practices should not be used as a bargaining tool to curry favors and/or to facilitate the negotiation of an agreement. The aim of enforcement is to ensure respect for existing laws. Only when laws have changed should enforcement practices change.

  The principal objective of enforcement in the fisheries sector is conservation. This involves the prevention of unlawful exploitation of the resource for purposes other than those specifically allowed by law and described in the licenses. It is appropriate to neutralize unlawful practices through the removal and impounding of equipment, found to contravene the license conditions.

- **Understanding**

  Every effort should be deployed to obtain the cooperation of native and non-native fishers to abide by the rules. However, it is possible that the political agenda of some factions of the community will lead to acts of defiance. The non-native communities should be asked to exercise restraint and to avoid taking boats out to monitor the situation, in vigilante fashion. Instead, if they have reason to believe that illicit fishing is taking place, they should report immediately to the enforcement arm of DFO, who, after taking measured and appropriate enforcement action, would then report back to the

communities. It should also be stressed that unlawful intervention by unauthorized people will be treated in a manner prescribed by law.

Enforcement Stress

All law enforcement agents must deal with a stress load not found in other professions. Judging by the testimony of the law enforcement agents we met, the stress factor reached critical levels during the past two seasons. In particular, the fisheries enforcement officers, whose judgment would normally be relied upon in the execution of enforcement initiatives, were stripped of their powers at critical times in the enforcement operations. They were on the frontline, yet they had to take orders from a higher command that was not even at the scene. They were harassed by native fishers for interfering with their fishing activities and criticized by the non-native fishers for not "doing their job". Seasoned enforcement agents were not empowered to perform their duties. They suffered severe stress and we became privy to their state of mind.

The Panel does not know why experienced enforcement agents were suddenly prevented from carrying out the role for which they had been trained. As one said:

"Our principal enforcement tool was the cell phone."

We know however that those who are sent to the front of a conflict should have been trained to act in response to the conditions they face. There is often no time to wait around for orders. The appropriateness of the action taken is directly related to the level of preparedness of the front line person. In a conflict situation, conditions change rapidly and require on the spot decisions. Strategies are appropriately the domain of higher echelons but the choice of tactics is part of the field officer's responsibilities. It seems as if these basic principles of engagement were forgotten during the events on the waters of Miramichi Bay.

We heard from officers who lived through the last events and were able to observe the demoralizing effects of ad hoc enforcement decisions.

The Panel is quite conscious that the suggested return to firm enforcement measures will impose severe stresses on enforcement officers. It would be preferable to assign enforcement officers from other areas to the Miramichi Bay until the situation returns to normal. It is common knowledge in the communities that the current enforcement officers in the region did not enjoy the support and respect of the command structure. They may lack the moral authority to effectively implement a strict enforcement program. In addition, a community sensitive program requires that every effort should be made to incorporate First Nations agents in the task force. Preferably, they should be fluent in the Mi'kmaq language.

The new contingent should be trained to perform their enforcement duties in community conflict situations, without the need for hands-on direction from the command structure during enforcement operations. Earlier, we called for a clear statement of enforcement objectives and practices as part of the community-based program we are favoring. The enforcement officers should be trained to execute such a program. The training in tactics should enable the enforcement agents to adjust to the situation they encounter without the need for higher command involvement in the front line operations. In addition, a special cross-cultural awareness program should be designed for the incoming enforcement officers to enhance their effectiveness in their conservation and peacekeeping role, a role that also requires systematic interaction and effective communications with the opposing groups to explain the rationale for the enforcement initiatives that are taken.

RECOMMENDATION 9

The Panel recommends that a conservation driven community focused enforcement program be developed incorporating the principles of clarity, firmness and understanding and that a special enforcement task force, recruited outside the region, be trained to function autonomously, efficiently and effectively in a theatre of operation characterized by the inter-community conflict. Special efforts should be made to integrate First Nations agents in the special task force. It must be operationally ready for the Fall fishing season of 2002.

The Panel understands that its suggestions come with a price tag. So does law enforcement which reportedly exceeded three million dollars in the Fall of 2001 in the Miramichi Bay area. Even if the alternate approach we propose to restore social order in the region were to cost more, it would be justified provided it brought peace to the fishing industry of the Miramichi Bay.

CROSS CULTURAL LAW ENFORCEMENT TRAINING

The need for a cross cultural training program was discussed earlier for the members of the special fisheries enforcement task force. The Panel heard from several law enforcement agents from the native, as well as from the RCMP, ranks that the effectiveness of law enforcement is greatly enhanced through cross-cultural training. Indeed, the "measured approach" described to the panel by the RCMP regional Superintendent involves a community-focused program of law enforcement. Since they are called upon to operate within different communities, their agents need to be trained in culturally adapted law enforcement.

The Panel adopted that view for its special task force, but we believe that the practice should be generalized to all law enforcement groups in this region.

RECOMMENDATION 10

The Panel recommends that a cross-cultural training program be developed and made available to all law enforcement agencies in the Atlantic region.

NEGOTIATION STRATEGY: A NEW APPROACH

The negotiations conducted so far by DFO have been with the Chief and the Band Council of the Burnt Church Mi'kmaq community. Thirty-two out of a total of thirty-four agreements have been signed that way. However, a stalemate has prevented the successful conclusions of negotiations with the Burnt Church administration. In the meantime, the members of that First Nation are foregoing the benefits of the fisheries reintegration plan. Each year there is a delay represents an additional year of missed opportunities.

It is our understanding that the Treaties are there to benefit the members of the First Nations communities suggesting another avenue of negotiations that could potentially break the deadlock. Once DFO has determined how many First Nations licensed fishers it is prepared to set up in business in the Burnt Church community, its objective should be to transfer the benefits to the First Nations communities at the earliest possible date. On this dimension, we have to commend DFO for its efforts. However, the fact remains that in the case of Burnt Church, the negotiations have proven to be unproductive. We already indicated that the reason for the procrastination might be politically motivated. In the meantime, members of the First Nations community are being deprived of substantial benefits. This raises the question of whether or not there is a legal impediment to adopting another strategy for the transfer of licenses.

No doubt it would be preferable to come to an agreement with the body elected to represent the community. However, this assumes that the elected officials are exercising their fiduciary obligations to act in the best interest of their community members. We have ample testimonial evidence that, in this case at least, the Chief and the Band Council are

not effectively discharging their fiduciary obligations. In fact, the generally accepted view is that only a selected few will benefit if and when an agreement is reached.

Therefore, if the treaties were really designed to benefit the people, it would be justified to find alternate ways to get the benefits directly to them. The Panel's understanding of the degree of political independence of the current Band council is tightly circumscribed. The Band is currently under third party management, a decision taken because of the mismanagement of the public funds placed in its care for the benefits of the community. Obviously, such an action would be unthinkable in relationships between independent governments.

The governance model that more accurately describes the relationship between Band Council and the Canadian government is one predicated on the principles of delegation and accountability. In this model, authority is delegated from a superior authority and can be revoked if the mandate is mismanaged. In other words, the entity being delegated to must earn its legitimate claim to exercise power by executing the mandate it has received in an efficient and effective manner.

The panel is convinced that the members of the First Nations of Burnt Church are being deprived of benefits accessible to them. In our view, this is sufficient reason to deal directly with interested members of the community.

That would involve a major change in strategy. Licenses and equipment would be attributed directly to individuals in the community as opposed to the community as an entity. The government should take the time to

design this alternate strategy for maximum effectiveness. Several factors need to be considered.

First, the nature of the transfer of license and equipment constitute a gift. Therefore, the absence of a financial undertaking by the prospective owner would make it attractive for literally everyone to apply for a license. Because the number of available licenses will be limited, a selection process will have to be instituted. Two main areas would have to be addressed; selection criteria would have to be established to insure fairness and objectivity and a selection body would have to be constituted to review the requests and to decide on the attribution of the licenses. The Panel believes that a License Attribution Board made up of elders, preferably former fishers, and including non-fishing representatives from the youth sector as well as from the women segment of the population would reflect the community approach we favor. The Band Council could be represented by one of its members. This is to insure that there is as much decision-making autonomy as possible in the allocation of licenses.

The initial Board would be appointed by DIAND. The Board would then appoint a non-voting Secretary. The size of the Board should not exceed seven members and they should appoint a chair from their voting membership by secret ballot for a period of two years. The Secretary would oversee the election of the First Chair. The mission of the Board would be to manage the fishing licensing process for the greater benefit of the whole community. The mandate of the Board would be:

- to review and adjust the selection criteria to reflect the conditions prevailing in the community,
- to conduct the screening process leading to the attribution of the licenses,

- to periodically review the performance of the license holders and,
- to take corrective action as required.

An appropriate stipend should be paid for attendance at the meetings of the Board.

Second, the primary objective of the program which is to bring First Nations people into the fishing industry thereby creating jobs would have to be retained in the agreement signed with the license recipients. On the one hand, the recipient should have the assurance that the title transfer could not be revoked by the Band Council or by the Department as long as he or she respects the conditions of the contract. One of the key conditions could be the direct involvement of the license holder as a practicing fisher thereby guaranteeing that the license will be actively exploited. A dormant license could be revoked, without compensation, after a specified period. These conditions should discourage the speculator from applying for a license. If licensees fulfil their contractual obligations they could be given the right to transfer the title to a family member without outside interference, but under the same conditions of active exploitation.

Third, the privilege accorded through the license could also be sold after a specified minimum number of years of active fishing. Five years might be an acceptable time. In this case, the revenue from the sale should accrue to the licensee. Obviously, this condition provides a significant incentive for the licensee. In particular, the price obtained for a license and fishing equipment would depend on the quality of the assets and should motivate the owner to maintain the equipment in good operating order. However, the title to the license and the equipment would not be clear. A lien would exist to insure that the license remains within the First Nations community. In the event that no one in the community

wanted to acquire the license, it would revert to DFO without further compensation.

Fourth, those selected would have to successfully complete an extensive fishery-training program before taking possession of their license and fishing gear.

Once qualified to fish, native fishers would likely experience the pride ownership derived from the ability to exercise a measure of control over their own career and destiny. They would have the same rights and responsibilities as their non-native counterparts. They also would reap the benefits of their efforts in the same way as fishers from other communities.

Consideration should be given to incorporating a freehold clause after a specified number of years. A ten-year ownership commitment would appear reasonable before the lien on the property is lifted. After a ten-year career as fishers, individuals would be deemed to have earned the right to dispose of their fishing assets as they see fit. A ten-year period should be long enough for professional commercial fishing to take root in the community. The only restriction that should remain should be the attribution of a right of first refusal to members of the First Nation community. This is consistent with the original intent of the plan.

RECOMMENDATION 11

The Panel recommends that DFO develop an alternative license transfer strategy based on a direct attribution of fishing licenses to individual members of the First Nation Community of Burnt Church. Enabling recommendations follow:

- **Institute a seven-member License Attribution Board with membership drawn from a cross section of the First Nations community members. (Elders, young people, women and a representative of the Band Council).**
- **Develop a license transfer contract under condition of continuous active participation in the fishing industry by the license holder and containing a time graduated transfer of ownership of the license and the equipment to the licensee along the lines described in the body of the report.**

CONSERVATION: A PROACTIVE APPROACH

The Panel was impressed by the role scientific knowledge could play in the management of a renewable fishing resource. For example, failure to heed the lessons of science resulted in the destruction of the cod resource on the Grand Banks to which historians attribute the discovery of the Continent by Europeans. The catastrophic destruction of the stock had equally catastrophic consequences for fisher communities whose dependence on the resource dated back centuries.

Lobster fishing has achieved the same economic status for communities in the Miramichi Bay area and yet the scientific knowledge vital to its conservation remains spotty. The knowledge that exists has been of great value in crafting the recommendations of this report. However, the Panel is convinced that without a major research effort focused on the behavior and habits of the lobster in the Miramichi Bay area, conservation measures may prove inadequate. The resource is too important to the economic base of the region to risk mismanaging it for lack of adequate and reliable scientific information. Scientists and staff of DFO told us that much more is known about salmon in the Miramichi than about lobster. We believe it is time to redress the imbalance and to fill the knowledge gap in the lobster fishery. The importance of the resource to Miramichi communities commands it.

We are not the first to call for more research. Dr Caddy did so in his recent report. We want to discuss a specific research plan for the area. We believe that the better understanding communities have about lobster fishing, the easier it will be to insure its survival. Since conservation is at the root of the current conflict, any activity that has the potential to facilitate the pursuit of a common goal of conservation deserves to be supported.

The Panel believes that a two-prong research project should be launched in the Miramichi Bay area. The first component would focus on the specific reproduction behavior of the lobster in the area. The objective would be to gain reliable information on how, when and where lobster reproduce. The research should yield accurate knowledge on the migration pattern of the animal. How far does it travel? Where does it travel from and where does it travel to, to reproduce and to feed? What does it feed on? What are its favorite habitats? Those are only a few questions that science can answer and that would inform a science-based preservation-focused lobster fishing management plan.

That knowledge should be supplemented by the need to understand the conditions under which nature could be assisted in maintaining its productive capacity and in increasing it through scientific aquaculture practices. There is no doubt that fishing technology has overtaken nature's capacity to replenish the stock. Existing conservation measures aim at minimizing the negative impact of fishing practices on the stock, but the control measures are far from perfect and are heavily reliant on the goodwill of the fishers. Will they keep undersized animal? Will they return berried females to water? What about fertilized females, do they even know how to identify them? Is it an acceptable risk to anchor the conservation of the stock on the chance escape of the fertile female?
Is there a symbiotic relationship between the species being fished in the Bay area? Could over fishing of other species lead to a decline in the lobster stock? This is one of the answers that an understanding of feeding habits of lobsters would provide.

If nothing else, the number and the nature of the questions that only science can answer suggest the degree of risk associated with the

exploitation of the resource. It is to mitigate that risk that aquaculture experimentation should be initiated.

RECOMMENDATION 12

The Panel recommends that a major research project aimed at gaining reliable scientific information about lobster fishing in the Miramichi Bay area should be implemented. The specificity of the project is described in the following subsidiary recommendations:

- **Fund a five-year lobster research project whose objective will be to study all aspects of lobster fishing in the Miramichi Bay area that impact the conservation of the specie.**
- **Constitute a multi-disciplinary team of scientists located in the area and to the extent possible, include First Nations scientists in the team.**
- **Recruit research assistants form the First Nations community of Burnt Church and from other non-native communities.**
- **Designate a site on which to operate an experimental lobster aquaculture farm and employ First Nations and non-native staff as assistants to the scientific staff.**
- **Develop a community and public scientific information program complete with exhibits about lobster fishing including visits to the experimental pond.**
- **Develop and make available to First Nations schools on a permanent basis a fisheries science information program.**
- **Use the presence of a scientific task force in the region to develop the infrastructure for an aboriginal fisheries institute.**

The Panel believes that the value of the additional scientific understanding warrants, by itself, undertaking the project. But there are collateral benefits that are just as important. First, there is the addition

of badly needed jobs for First Nations and non-native people alike. The initial five-year duration of the program will provide relatively stable employment in a region that needs it. Second, and equally important, the project is designed to bring members from different communities to work together and to develop ownership of an important resource through the knowledge they gain as they assist scientists in their work. Third, the communities will also become more knowledgeable as information programs, designed specifically for them, are introduced. It should be remembered that, as things stand, there is skepticism about the role of science in the management of the resource. The more informed the communities become the greater understanding they will have of the need for conservation measures. Fourth, the community information programs could be expanded as a tourist attraction. The area gained notoriety for the trouble on the waters. A well-crafted promotional campaign could peak the curiosity of tourists. Areas where tragedy occurred fascinate people. The September 11th events will turn the site into a shrine. One can imagine what a campaign on the theme of: **Burnt Church then and now** might yield. The "**now**" of course would focus on renewal and community healing projects. Finally, the fisher communities may develop a newfound sense of pride and a renewed sense of trust in governments because these actions speak directly to their concerns. Yes, lobster is important not only to the fishers but also to the community as a whole. Why else would the government invest in the region?

ADDENDUM

SOCIO-ECONOMIC PROFILE-STATISTICAL ANALYSIS

DEMOGRAPHIC PROFILE

The Panel was struck by the dissimilarities of the age distributions between Burnt Church and the other communities. Figure 1 highlights two key elements of the comparison: age and education

Figure 1: Selected Demographic Factors

	COUNTY	**South Esk.**	**North Esk.**	**Neguac**	**Burnt Ch.**
DEMOGRAPHICS					
Less than 25 yrs	**35%**	38%	32%	34%	52%
More than 64 yrs	**13%**	12%	12%	13%	3%
EDUCATION					
H.S. diploma	**13%**	17%	19%	11%	5%
Bach. & above	**5.5%**	5.0%	4.6%	8.6%	2.6%

The Burnt Church Mi'kmaq population is substantially younger than the surrounding communities. Fifty two percent (52%) of the inhabitants are less than twenty-five (25) years of age compared to only 35% for Northumberland County as a whole, and 34% for the neighboring francophone community of Néguac.

Perhaps the most eloquent indicator of the debilitating effect of life on a reserve is the fact that only 3% of the Mi'kmaq people in Burnt Church live beyond age 64. While in the County, longevity is enjoyed by 13% of the population, the same as in Néguac (13%).

The comparison on educational achievement shows an equally striking difference. Burnt Church Mi'kmaq youth do not pursue their educational quest to the same extent as their counterpart in the neighboring

communities. Only 5% obtained a High School diploma compared to 13% for the County and 11% for Néguac. The picture does not improve at the university level where only 2.6% obtained a bachelor degree or above. This compares to 5.5% for the County and 8.6% for Néguac.

The fact First Nations youth are less likely to persist in the educational system in comparison to the rest of the Canadian population is well documented. Burnt Church Mi'kmaq Youth are no different. However, that does not justify a passive, fatalistic response to the situation. The emergence of First Nations as full-fledged partners in Canadian society necessarily involves the acquisition of the knowledge and know-how required to function in a modern economy.

We visited a school on one of the reserves that would be a model of integration of information technology within a primary schooling curriculum anywhere. It was impressive to walk around and to see young First Nation pupils doing research on the internet, preparing their homework using the computers, sitting in pairs or in groups reading to each other, oblivious to the presence of strangers. We saw the faces of happy, well-behaved and curious young minds, the kind any parent anywhere would be proud to have. These young children represent the hope for the future of First Nations. They are getting a modern education, but equally important, they are learning their language. This tool will give them access to their ancestral cultural heritage on which they will be able to anchor their distinct identity. Such developmental opportunities should be top on the list of priorities in every First Nation communities. Unfortunately, the situation in Burnt Church was not up to that standard. A major effort will be required to bring about the kind of school we were able to observe elsewhere in a few other first Nations communities.

White European education system has failed to reach young natives for the past several centuries. It is a symbol of a misguided and ill-fated attempt to deal with "the Indian problem" through a strategy of assimilation. The existing education system may require First Nation youth to attend school, but that imposition has not proven to be an effective motivator for them to succeed. However, we witnessed instances proving that pedagogy adapted to the needs of First Nation children is feasible and effective in striking the spark of intellectual curiosity among them. What is even more encouraging is that parents, who have children in that school, want to keep them there. That contrasts with the situation in the Burnt Church Mi'kmaq community. We were told that native parents who want a good education for their children send them to non-native schools.

The Panel is convinced that a good school adapted to the needs of the First Nations children is the cornerstone of a renewal of the Burnt Church Mi'kmaq community.

The evidence is clear and the conclusion inescapable, a new approach aimed at developing the full potential of First Nation peoples is urgently required! It starts with capacity building around quality schooling on the reserve.

Community leaders on all sides agree that an effective education system must be one the pillars of a societal renewal of First Nation communities. Educational experts everywhere should be challenged to come up with an adapted educational philosophy and an appropriate pedagogy to insure that the significant basin of young native talent does not continue to waste away. The loss of self-esteem, anesthetized by alcohol and drugs,

and despair that erupt in acts of violence, too often directed at themselves, is an unacceptable price to pay.

The development of an effective educational system, focused on the learning needs and the learning style of First Nations youth is one of the first priorities to be addressed. Only when they understand the contribution education can make to their development as autonomous, self-reliant individual capable of determining their condition in life, as well as their living condition, are they likely to become interested. Such systems exist in the Miramichi region. They could serve as benchmarks for schools in other communities.

As vital as a good education may be, it is a long-term goal as well as a long-term solution. Unfortunately, it will do little to assist the young people who have already left the educational system.

EMPLOYMENT DOLDRUMS

The current reality is that undereducated young natives are also under-employed. A long-term solution to the Miramichi problem must address the availability of gainful employment for young adults leaving school early. The lessons of the past should be heeded. Poor employment prospects have had a significant negative impact on the social conditions and climate in First Nation communities.

Poor education and poor employment prospects inevitably lead to idleness. It is logical for anyone living in those conditions to **develop a feeling of hopelessness, an attitude that they have nothing to lose**. As a result, the whole social climate of the community is volatile. Young natives will not be easily swayed from the temporary adrenaline rush brought on by participating in highly charged events of social unrest.

"The first year kids didn't want to say where they were from. The second year the kids were proud of where they were from. I'm from Burnt Church!"

The sad reality is that the newfound pride of the youth on the Burnt Church reserve had to be triggered by events of social unrest. That motivational factor should not be underestimated as the situation plays out in the Miramichi Bay community. Unfortunately, there is no quick remedy to the systemic neglect that every native person living today, young and old alike, has been subjected to.

The Burnt Church Mi'kmaq reserve is experiencing a rapid growth in the youth segment of its population and that should be good news. However, a renewed dedication to finding an effective, workable solution that will motivate the youth of that community to turn to education as a way of improving their condition in life is urgently needed. So is the need to initiate an economic development strategy that will drive the creation of meaningful employment opportunities in the region.

At the other end of the age spectrum, the current life expectancy is substantially below the average for surrounding communities attesting to the fact that life on a reserve is exacting for native people.

A major community rebuilding effort is urgently needed on the Burnt Church reserve. The aim should be to improve the quality of life for the residents. That is an essential component in the edification of a solid foundation for a lasting social peace. Fishing licenses and equipment can only provide symptomatic relief.

ECONOMIC PROFILE

Numerous studies have documented the economic plight of First Nations. The report of the Royal Commission on Aboriginal Peoples is a rich source of information on the subject. In fact, analysis of the situation of all people relying heavily on the exploitation of primary resources (forestry, mining, fishing and farming) have also shown that their economic and social development lags the rest of society. The Miramichi Bay area is a case in point. It is primarily a resource-based economy typically characterized by seasonal employment, a condition that is readily apparent in the proportion of income received through transfer payments, Figure 2.

Figure 2: Source of Income

	COUNTY	**South Esc.**	**North Esc.**	**Néguac**	**Burnt Ch.**
Employment	**67%**	65%	73%	63%	56%
Transfer payment	**26%**	31%	21%	30%	40%

Transfer payments represent a high proportion (26%) of income in the County as a whole. The Burnt Church Mi'kmaq community fares even worse with 40% of income coming from transfer payments. That reflects a relatively greater lack of employment opportunity in an area generally affected by endemic underemployment. Thus, it is faring the worst, in a generally unfavorable economic environment.

But there is an additional insidious side to endemic underemployment. It fosters reflexes of self-preservation. It is not difficult to imagine that if a job becomes available, it will be attributed to a member of the family, an

acquaintance, or a member of the social group in that order. Social behaviorist would view that as normal because preserving the homogeneity of group membership enhances the chances of group survival. It is equally normal for a minority group to perceive such practice as discriminatory because it results in an apparent systematic exclusion from the job market and a lack of opportunity to compete on equal terms. The social justice barometer depends on whether or not there is malicious intent driving the behavior. That is the real test of discrimination and its extreme form: racism.

Nevertheless, the Panel believes that part of the price to pay to foster harmonious relations between minority and majority groups is for the latter to proactively open the doors of employment to its minority brothers and sisters. There are no hard facts about employment practices in the region except a reported 80% rate of unemployment among First Nations communities. It provides strong evidence that, when jobs appear on the market, the majority group behaves according to social group norms favoring its own members who, it must be said, also face high levels of unemployment.

There is room for a greater concern for social equity in the regional job market. The Panel certainly favors more socially conscious efforts at opening the job market to native peoples. However, solutions designed to foster the emergence of a First Nation economic base must also be found. They are more likely to produce lasting results. Fishing is only one of the options that should be developed.

In an effort to gain a clearer understanding of the income profile of the reference communities, we undertook three main comparisons. The first

looked at the distribution of income according to Statcan's income level classification, Figure 3 below.

We observe that 100% of the individual income earners in Burnt Church earn less than $50,000 a year. In Néguac, that proportion is 78% meaning that 22% earn more than $50, 000.

Figure 3: Comparative analysis of personal income

	COUNTY	**South Esk.**	**North Esk.**	**Néguac**	**Burnt Ch.**
DISTRIBUTION :					
Individuals					
Less than $50,000	**67%**	65%	59%	78%	100%
Husband & wife:					
Less than $60,000	**74%**	78%	72%	76%	92%
Less than $80,000	**86%**	92%	88%	91%	100%

The corresponding numbers for the County are 67% and 33%. In North Escuminac only 59% earn less than $50,000 while 41% earn more. This demonstrates the degree of imbalance in the income generating capacity of the Burnt Church Mi'kmaq community.

The same results obtain when comparing households where husband and wife work. In Burnt Church, 92% of such household earn less than $60,000. In this case, resorting to dual income does not result in a significant improvement. In Néguac, the comparable number is 76%. North Escuminac has a still better ratio at 72%.

Statistic Canada's census data break down income into two main categories, the "full-time-full-year" and "part-time" employment categories. We conducted our analysis on the "full-time-full-year" income earners because we felt those data were the most reliable for comparative purposes. "Part-time" income data does not differentiate between the rate of income received for a given amount of work and the differences attributable to the duration of the employment.

We compared the relative income of different groups of earners to the County's individual average, Figure 4.

Figure 4: Comparative analysis based on county average

	COUNTY	**South Esc.**	**North Esc.**	**Néguac**	**Burnt Ch.**
Full Yr.-Full Time :					
Individual Aver.	**$32,865**	**$34,065**	**$33,180**	**$31,077**	**$19,429**
Compared to Av.					
Male	**118%**	119%	116%	105%	58%
Female	**73%**	70%	68%	79%	56%
Husband & wife	**134%**	125%	140%	118%	82%

Generally, the analysis reveals that a husband and wife household earns more (134%) than the County individual earner average. That holds true for all communities except Burnt Church. It is remarkable that a First Nation husband and wife unit in Burnt Church only earns 86% of the earnings of an individual in the County. Thus, the disparity in earning potentials between the two groups is confirmed in dramatic fashion.

Not surprisingly, individual male and female earners from the Burnt Church Mi'kmaq community fare even worse at 58% and 56% respectively. Thus, a person living on the Burnt Church Mi'kmaq reserve earns between 42% and 44% less than the average individual wage earner in the County.

The female income is lower than the male earner across all categories ranging from a negative differential of 49% to a lower but still negative discrepancy of 2% in the Burnt Church community.

Next, we compared members of each community to their peer reference group. Thus, male earners were compared to the County average for all male earners, Figure 5. The same comparison was made for female earners and family units.

Figure 5: Comparative analysis within categories of earners

	COUNTY	**South Esc.**	**North Esc.**	**Néguac**	**Burnt Ch.**
Individuals:					
Male	**$40,270**	101%	97%	91%	57%
Female	**$24,787**	96%	94%	108%	50%
Families:					
Husband & wife	**$45,575**	94%	105%	88%	61%
Single parents:					
Male	**$34,684**	N/A	101%	46%	67%
Female	**$22,098**	82%	117%	92%	64%

Inspection of the results in Figure 5 confirms that the substantial disparities, observed in the two income distribution and also in the

comparative analysis based on the average individual income for the County, are present in the comparison within categories of earners.

The conclusions from the analysis of the economic profile of the reference communities point unequivocally to the existence of systematic income disparity between the Mi'kmaq living in Burnt Church and the residents of other communities in the Northumberland County. The disparities are equally noticeable when the comparison is made with francophone and anglophone communities of fishers as represented by the Néguac and North Escuminac communities respectively.

The Burnt Church Mi'kmaq community gets 40% of its income from transfer payment, that compares to 30% in Néguac and 26% for the County. Its average individual income is 41% lower than the County average, while Néguac is only 5% lower. Those relative positions hold true whatever comparative base is used in the analysis.

Those conclusions are consistent with what is known of the conditions of First Nation peoples across the country. The value of the analysis in the context of the Panel's study is to provide a community specific factual base for its conclusions thereby avoiding inferential evidence drawn from other sources that could be dismissed as irrelevant. The facts presented here are irrefutable.

INCIDENCE OF DIFFERENTIAL TAX TREATMENT

Some members of the non-native communities' point to the privileged position enjoyed by First Nations people with respect to taxes. First Nation members living on the reserve are exempt from paying taxes.

The following is an attempt to construct a measured equivalent to the Purchasing Power Parity concept (see insert below) used by the United Nations to compare living standards across different economic and social systems.

Purchasing Power Parity (PPP).

A method of measuring the relative purchasing power of different countries' currencies over the same types of goods and services. Because goods and services may cost more in one country than in another, PPP allows us to make more accurate comparisons of standards of living across countries. PPP estimates use price comparisons of comparable items but since not all items can be matched exactly across countries and time, the estimates are not always "robust."

Source: World Bank GNP statistics glossary

We assumed that net disposable income after all taxes have been subtracted would be a good proxy for the Purchasing Power Parity adjustment factor.

We base our analysis on an example of a husband and wife household in Néguac whose average income was $40,200. It is assumed that they have no dependent children, which gives their base deduction as $12,585. We do not consider other deductions such as RRSP, CCP, medical and charitable deductions. In this case, the taxable income would be $27,615 ($40,200 -$12,585). The applicable tax rate is 16% ($4,420). This leaves an after tax income of $35,780. We were informed that municipal taxes of all kinds in Néguac would be approximately $1,000. For the purpose of this exercise the amount has to be converted into its pre-tax equivalent

because the payments are made from after tax income. Therefore the pre-tax equivalent amount is $1190, leaving $34,590 in disposable income. We will assume that 60% of that amount would be spent on goods and services subject to the HST at 15%. This results in another tax deduction of $3,110, converted to pre-tax dollars gives $3,700. Thus, the Purchasing Power Parity amount left to the couple is down to $30,890. Finally, there are interest payments on mortgages to be considered since housing is also provided to reserve inhabitants. We will assume an average mortgage balance of $30,000 at 6% or $1,800 per year, for a pre tax equivalent of $2,140. The net balance after lodging related financing expenses is $28,750.

Maintenance and insurance have been left out because they might be considered as capital protection expenses.

The principle behind the calculations is sound. Fairness requires that an adjustment for the impact of taxes on disposable income must be made when comparing income subjected to different tax treatment. However, the calculations, used in this case, to obtain a Purchasing Power Parity adjustment contain conjectural data and caution is advised when interpreting the results.

To the extent that the adjustments are reasonable, the analysis yields the following results. The amount of $28,750 available to the Néguac earners compares to $27,800 for their native counterparts. Hence, the disparity is not as important as when the previous analysis was performed using unadjusted data.

The First Nations couple is still below parity. Its earnings are now at 97% of the parity adjusted Néguac couple's income. Thus, a mere 3% separates the two family units.

If the Néguac couple had children, deducted RRSP contribution and any others allowable contribution, the net effect would be to lower the amount of income tax they would pay. This would leave them with a higher Purchasing Power Parity adjusted income. Of course any increase in parity adjusted income would widen the gap between the two groups, but it is unlikely to do so significantly.

The reason for the widening gap is because the income of the native couple is not taxed and therefore their base remains constant.

The example demonstrates that there are indeed benefits to being tax exempt. The First Nation people should take those factors into consideration when comparing their gross earnings to that of other Canadians. In this example, what appeared as a 39% gap in income, shrank to only 3% when the Purchasing Power Parity was calculated. In a seasonal employment resource based economy, it would not take much for that gap to vanish. For example, if the issuance of two-season commercial licenses resulted in a reduction in lobster stock, the earnings of non-native fisher communities would decrease immediately.

The expectation of a decline in stock is not driven by some irrational fear on the part of non-native fisher communities. It is supported by Dr Caddy's analysis.

> *"The reason being their perception, **correct in my view**, that an uncontrolled and excessive fall fisheries will impact their livelihood and nullify their past efforts towards conservation." P.7.*

He also concluded that lobster taken in the Fall would not be available in the Spring. This aspect of fisheries management will be discussed later.

Therefore, the threat to current living standards for the anglophone and francophone communities is very real. The Purchasing Power Parity analysis indicates that there may not be much difference in economic status of the husband and wife household working full-time-full-year in both communities. Of course neither group qualifies as enjoying a secure and comfortable lifestyle by Canadian standards. The yearly revenues of an average lobster fisher are presented in Fig. 6.

Figure 6: Average Inshore Gross Landed Value – Lobster Breakdown for Bay of Miramichi Fishermen

Total revenue	**$67,699**
• Variable cost	$10,605
• Vessel	$2,443
Net fishing gear expenditure	$3,560
• Fixed costs	$3,390
• Financing costs (interest & capital)	$6,896
• Labour costs	$14,997
Cash-flow	**$25,808**

Source: Maritime Fisherman Union 2002

The gross value of the lobster landing ($67,700) may appear substantial but once all expenses have been paid, the cash flow ($25,800) accruing to the fisher is much more modest. Fishing may not be as lucrative as some may believe.

Any action that would disrupt the current way of life of fisher communities would understandably raise their level of anxiety about their ability to maintain their current standard of living. Anxiety breeds fear and fear often elicits an emotional response. In the current situation, the feeling is amplified by the perception, expressed several times in the non-native fisher communities, that DFO is turning a blind eye to practices that could quite probably change the economic base of their livelihood.

If nothing else, the preceding analysis should reveal some of the reasons why non-native fishers are acting up. They feel threatened.

> ***"You have to live in Néguac to understand, if people stay they starve."***

That statement speaks to the lack of employment opportunity in the region for fishers whose livelihood has been taken away as a result of the DFO buy back strategy. People suddenly dispossessed of their traditional means of earning a living are likely to react.

The Panel certainly does not advocate nor condone the lawlessness exhibited during past altercations played out on the waters of the Miramichi Bay. However, if we are to suggest meaningful solutions, we need to generate plausible hypotheses to explain the underlying factors driving the behavior of opposing groups. The precariousness of employment income on both sides certainly qualifies as a valid hypothesis.

The preceding analysis reveals that there is not much to choose between the economic situation of husband and wife households from Burnt Church Mi'kmaq community and Néguac working "full-time-full-year". It is reasonable to assume that both would react forcefully to anything that would threaten their marginal livelihood.

It may be true that the disparity between native and non-native family of "full-time-full-year" earners is not as great as the unadjusted income statistics would suggest, but that is not a sufficient reason to generalize those findings to the community as a whole. In the final analysis, the true measure of economic well being is what communities can generate to support their members.

Per Capita Earnings Comparison

According to the 1996 census data, out of a population of 815, there were 385 Burnt Church resident earners with an average income of $8,735. That data could have been used for the purpose of the analysis that follows. Family income data was chosen instead because the family unit is assumed to be the prime source of support for all those who do not work.

In 1996, there were 185 family units in Burnt Church Mi'kmaq community with an average income of $27,800. There were 485 families earning an average of $40,200 in Néguac. Those numbers will be used to generate a per capita impact analysis. The aggregate of family earnings is assumed to represent the financial resources available to support the whole population of the respective communities. Figure 6 summarizes the findings.

The technique of comparative analysis requires that every effort be made to isolate cause and effect relationship. Controlling for the largest number of variable possible does this. In the current exercise, we want to refine our understanding of the Purchasing Power Parity gap existing between the Burnt Church Mi'kmaq community and surrounding non-native communities.

Figure 7: Per capita income and purchasing power parity

	Néguac	Burnt Church	Burnt Church Standardized
Population	1735	815	666
Families	485	185	185
Average income	$40,200	$27,800	$27,800
Average family size	3.6	4.4	3.6
Estimated community earnings	$19,497,000	$5,143,000	$5,143,000
AVERAGE PER CAPITA-YEARLY	$11,240	$6,310	$7,720
AVERAGE PER CAPITA – MONTHLY	$937	$525	$640
Purchasing Power Parity factor (.72)	$675		

When we compare the unadjusted per capita monthly income, we observe a wide discrepancy. Burnt Church Mi'kmaq residents' average per capita monthly income represents 56% of their Néguac neighbors. That finding is consistent with the observations made in the first part of this analysis comparing husband and wife family income.

However, the Purchasing Power Parity adjustment, introduced to account for the difference in tax status of the communities, narrows the gap substantially. The per capita income for Burnt Church reserve residents stands at 78% of their neighbors, after adjustment. That is still a larger

discrepancy than was obtained when comparing the unadjusted family income on the same basis. One of the reasons is that the average size of the Burnt Church Mi'kmaq family is 4.4 members compared to 3.6 for Néguac. Even if adjusted earnings were identical, there would be less to distribute to each member of the Burnt Church Mi'kmaq community.

For that reason, we looked at what would be the economic outlook if the Burnt Church Mi'kmaq families were hypothetically the same size (3.6) as their Néguac neighbors. The results are presented in the last column of Figure 7.

The average per capita income for the Mi'kmaq population of Burnt Church would be $640 compared to the parity adjusted $675 for Néguac. The economic discrepancy factor still favors Néguac. But, if the Burnt Church families were of the same average size as the Néguac families, their monthly per capita income would be at 95% of the parity adjusted number for Néguac. The 5% differential turns out to be similar to the gap observed using the family "full-time-full year" income data.

The fact that the Burnt Church Mi'kmaq family supports 4.4 person on average is not in dispute. But the gap of 22% between per capita income of the Burnt Church reserve residents and those of Néguac is not due primarily to an earnings discrepancy, it is due to family demographic factors.

The preceding analysis demonstrates that when the two communities of the Burnt Church Mi'kmaq reserve and Néguac are analyzed on a comparable earnings basis, they are much closer to each other than unadjusted earnings would lead to believe. The economic conditions of the two communities have more in common

than popular perception might suggest. Perhaps the mutual awareness that they in fact share the same hardship should constitute a unifying force, not a divisive one.

APPENDICES

APPENDIX 1

Reclaiming our Nationhood
Strengthening our Heritage
Report to the Royal Commission on Aboriginal People

ASSEMBLY OF FIRST NATIONS
1993

Introduction

We, the Assembly of First Nations, want to see fundamental change in our human condition and in our relationship with Canada. We see these changes as providing our social and economic advancement and as essential to maintaining social peace. As First Nation leaders, we have a duty to ensure that our people are treated justly in our homelands and our country. We insist on fair and respectful treatment. This is a responsibility we bear for future generations of our peoples.

While we would like to see a new relationship emerge between First Nations and Canada, we are firmly of the view, that the principles of this new relationship are in our history and especially in our history of treaty making with European nations and Canada.

In fact, it is the very neglect and denial of the rights and obligations in the treaties and the first principles, based on an equal nation-to-nation relationship, that is the cause for most of our current problems and grievances and the reason for our demand for a new relationship.

The new relationship will emerge from the restoration of the first principles. We can move forward together by restoring what was good, and by redressing what was bad, in our common past. Our people want a future, based on a discourse with Canada, that is respectful and knowledgeable about our history and our indigenous human rights, in this land that we call Mother Earth.

This place which is now called Canada, is our only home on Mother Earth. It is the homeland of our nations. Our ancestors explored and settled all the forests, the rivers and the lakes, the mountains and the plains, the coasts and the inland and all the seasons of

the land. Today our people's paths through our lands have been severely restricted by the acts of not the Creator, but by the actions of new settlers.

We shared this bountiful land with our many distinct aboriginal brother nations for thousands of years before the arrival of Europeans. We had ancient agreements on how to share the land and its resources. These agreements, later known as treaties, were an established tradition among First Nations.

Our songs, our spirits and our identities are written on this land, and the future of our peoples is tied to it. It is not a possession or a commodity for us – it is the heart of our nations. In our traditional spirituality, it is our Mother. We are passionate about this land, and we want you to understand that passion is not about power and individual wealth. It is reflective of the strong spiritual teachings which our nations share, of respect for Mother Earth and of all Creation. It is our life.

We are this land, and yet we have been excluded in most bitter fashion. This is painful for our peoples, and it shows in the suffering we have collectively endured for several centuries. Our traditional homelands have been taken over by a society, which has built a Nation-State that does not include our peoples, our collectivities, and disregards our human right of self-determination. This is an agonizing experience for us, because we have been victimized in our own home, in our own lands. No human race deserves to be dispossessed of its past and future heritage.

When the Europeans arrived, we again shared our land and resources and taught them how to survive. Our earliest relationship with the first settlers was as equal partners in commerce and trade, and military alliance. These agreements or treaties clearly signified a special relationship as brothers, equals and allies and were expected to be honoured by all parties… "as long as the sun shines".

The treaties we signed with Europeans were meant to ensure the continued existence of our cultures and ways of life. However, we realized shortly after contact that our cultures and peoples were very different and that it would be important not to have one dominate or impose its values and traditions on the other.

Our systems of government evolved over thousands of years and they permitted us to live in harmony with one another and with our environment. First Nations did not elect governments by holding elections on the basis of one person-one vote majority rule. Instead, we used traditional methods to select our governments.

We selected our own leaders, made our own laws and governed our own affairs. Our traditional governments regulated all aspects of life – from housing and adoptions to land use and social assistance. Our nations used customs, tradition and ceremonies to maintain harmony. We had our own justice systems to resolve disputes and maintain peace.

Traditional first Nations governments included representatives of every family of clan. Traditional First Nations governments did not operate on the basis of majority rule. Instead, we operated by consensus, a system which requires everyone to agree on a particular course of action. Consensus, however, does not mean unanimity. Under consensus, the 'majority' must find a way of accommodating the interests and concerns of the 'minority'. And, the 'minority' conforms with the wishes of the 'majority'.

Consensus is based on a principle that sets life in the First Nations clearly apart from the Canadian, American and European experience. That principle is the importance of collective rights over individual rights. First Nations lived by codes that made the interests of the family, clan and nation more important than the interests of the individual.

Our lives were dominated by the need to fulfil our duties to our families, communities and nations. This way of life imposed an obligation on individuals to place other people's needs first. As a result, two distinctive features – sharing and co-operation – became a central focus of First Nations' life. The people of the First Nations willingly sacrificed some individual freedom to the common good, because that way of life ensured the comfort, well-being, safety and survival of the nation.

In addition to the traditions involving consensus and majority rule, there wee other major differences in the way First Nations and Europeans governed themselves. First Nations, in many regions, the Micmac and Iroquois in the east, for example and the Blackfoot in the west, established a sophisticated form of federal government called a confederacy.

Under this system, individual nations were free to do as they wished, the confederacy provided unified action. The idea of a federal government amazed Europeans who were being ruled by absolute monarchs. The Americans were so intrigued by the Iroquois Confederacy that they modeled their own system of government after it.

Much has changed since early contact with European governments and peoples. Our populations have been decimated by disease; our traditional economies destroyed; our traditional and sacred territories fenced off and forbidden to us; our children have been taken from us and we have been confined to small pieces of land called 'reserves'.

We believe that many of the problems we face today are rooted in the failure to honour our treaty relationships. We have consistently reminded governments to keep their word. Since the 1700's, we sent delegations to Britain to assert our rights. After 1867, we sent delegations to Ottawa. We have argued our case before the League of Nations and the United Nations. Our treaties are sacred agreements and we will dishonour the memory of our ancestors if we do any less.

We insist that all deliberations on the future of our peoples respect the fact, that we approach issues of political and social change from a different perspective. Like our ancestors, we regard the right to be different note as an obstacle, but as a foundation for our co-existence as distinct peoples.

Our struggle for a future is not about power – it is about survival and justice. We have been victims of both power and injustice. We believe, that as a consequence of that victimization, our future relationship can and must not be based on the abuse of power and the perpetuation of injustice.

As you have established during the Commission hearings across the country, our peoples are in dire circumstances. The physical, mental, emotional and spiritual health of our peoples has been undermined by policies based on attitudes which have attacked our identify as distinct people, and sought to assimilate us into an alien culture and economy. Our lands have been taken illegally and unjustifiably. Our languages and cultures have been ridiculed, undermined and nearly eradicated.

The suffering our peoples have experienced in residential schools and through explicit policies of assimilation need to be publicly addressed in Canada. Only then, can the basis for a new relationship be established. Public acknowledgement of historic wrongs our people have experienced, must be made by Canadian governments.

An environment for healing must be created, not just for First Nations but for all of Canada. Canada must face the brutal truth of its records with First Nations. Churches have recently extended apologies to First Nations. Their example must be followed by governments. However, both churches and governments must go far beyond apologies.

First Nations no longer have self-determination. First Nations are ruled by the Indian Act and many other federal and provincial laws. The Indian Act imposes many barriers to First Nations' advancement. Traditional governmental systems, structures and practices

are not recognized under the Act. First Nations still need to Minister of Indian Affairs approval to enact even the most ordinary of laws.

We have been regulated and governed by the Indian Act for over a century – an oppressive colonial legislation that attempts to tell us who we are as peoples. This law has been used to deny our peoples the freedom of association, the freedom of religion; in short – their freedom as a human race.

Amending the Indian Act will not work. The larger issue remains lack of control over our lives, and the non-recognition of the right of self determination for First Nations. Imposed systems, which remove responsibilities have not worked. We have to re-institute our own systems; we have to take the responsibility.

We are faced with complex problems and fewer resources to deal with them. Canada has relieved First Nations of any authority and responsibility for control of their communities. It is not possible for distinct societies to be self-reliant when the imposed system is dictated by principles reflecting another societies values.

Sometimes even we believe that we are on the brink of extinction as peoples. The loss of our diversity, our contribution to the heritage of the world community, would be a tragedy for all.

Against all odds, our peoples have miraculously survived oppression and colonization. We have resisted complete assimilation of our cultural identities, our languages and our traditional governing institutions and economies. We are now on the path of renewal – the healing of our people and our indigenous nations.

Although our identities have been shaped by our encounters with European newcomers to this land, we also have shaped and influenced their identities. Yet, our contribution to this country has not been recognized. Our peoples' histories appear erased in the official version of Canada. This is unacceptable, this is wrong.

We have come full-circle in our ties with Canada. Contemporary First Nations understand and embrace the vision of our ancestors, who treated the new settlers as relatives, with whom to share a common commitment to our Great Mother.

We are deeply offended at the mention of the myth of two founding nations in Canada. At Confederation in 1867, only representatives of the English and French settlers

participated in the founding – we were ignored. We need to attain recognition as distinct nations, deserving of respect.

We focus in this report on our vision for the future. We emphasize where we expect to go and how we see you. The Royal Commission, assisting us in this voyage. We have based our recommendations on First Nation customs, traditions and teachings – to express how we see the future.

The approach to change we advocate in this report is holistic in nature. But it will also take extensive constitutional, legislative and policy changes and developments. We realize that this is a great challenge. There has been enough agonizing over our situation by all concerned. It is time we dealt with our situation in a comprehensive and extensive fashion... together.

Our report addresses particular concerns and contains specific recommendation, to ensure that you, as commissioners, will have a full understanding of our aspirations.

Our message is also directed to all levels of Canadian governments, to all First Nation governments, to First Nation people and all the people of Canada.

As the Royal commission on Aboriginal Peoples, governments will be looking to you for solutions. You carry the responsibility for our futures. We ask that you carefully consider our vision of a new relationship and our recommendations for change. Our people will remember you, and your efforts as a Commission, for a long time into the future. Remember us, and especially our children and the coming generations, in discharging your mandate•

APPENDIX 2

MIRAMICHI BAY COMMUNITY RELATIONS PANEL
DES RELATIONS COMMUNAUTAIRES DE LA BAIE MIRAMICHI
(DFO-MPO)

39, rue Halifax St., Miramichi, N.-B. E1N 2E6

January 25, 2002

Hello,

Please find enclosed the **Terms of Reference** in regards to the **Miramichi Bay Community Relations Panel**, an independent advisory body appointed by the Department of Fisheries & Oceans Canada to study and make recommendations regarding fisheries issues between Aboriginal and non-Aboriginal communities in the region.

As co-chairs, we are most interested in the opinions of all individuals and groups in this region, although some of you may feel that you are best represented by the Maritime Fishermen's Union (MFU) which has accepted our invitation to meet and discuss relevant issues in this matter.

We are most anxious that all interested parties are informed of our Community Relations Panel and to know that we are available for comments or submission of briefs by you or your representatives.

Our deadline for representations is March 6, 2002. We expect to report to the Minister by March 15, 2002.

If you wish to contact us, our main office is located at the RedSky Aboriginal Institute in Miramichi. Our communications co-ordinates are:

Tel: (506) 773-4511
Fax: (506) 773-4502
E: redsky@nbnet.nb.ca

We look forward to your comments and remain,

Sincerely,

Mr. Justice Guy A. Richard
Co-chairs

Chief Roger J. Augustine (Ret)

TERMS OF REFERENCE

Considerations:

An Approach that is Broad, Independent and Community Based.

- **The Panel provides an opportunity to examine issues from a broader perspective than fish management. The issues at play are more fundamental than competition for fisheries access. Traditional fisheries management strategies have not been sufficient.**

- **The communities involved have had longstanding differences and the Panel affords an opportunity to examine long term solutions. Long term peace requires a new approach.**

- **The Panel provides an opportunity for a community-focused approach to reconcile divisions and to explore options to support long term economic and social well being. It allows community leaders and members to air out concerns, to talk to one another about solutions and to take responsibility for solutions.**

- **An independent panel affords an opportunity to conduct politically neutral analysis of the issues. Its recommendations should carry additional credibility for community members as well as for different levels of government.**

Mandate:

- **Assess the current community relationships in Aboriginal and non-Aboriginal communities in the Miramichi Bay area.**

- **Discuss the situation with private citizens and community leaders and community members.**

- **Provide a consultation report to the Minister of Fisheries and Oceans regarding the current state of affairs and dealing with approaches for communities and governments to encourage Aboriginal and non-Aboriginal communities to work toward common purposes**

The Panel:

- **The Panel will be community focused and would seek the views of the community members and leaders around Miramichi Bay.**

- **The Panel will be independent and will deal with broad approaches beyond fisheries management.**

Scope:

- **The Community Relationships Panel will hold private and public meetings with aboriginal and non-Abiriginal fishers and receive briefs from interested and affected parties. The Panel will meet with as wide a range of community members as possible.**

- **The Community Relationship Panel does not have the scope to define or limit Aboriginal rights.**

MIRAMICHI BAY COMMUNITY RELATIONS
PANEL
DES RELATIONS COMMUNAUTAIRES DE LA BAIE
MIRAMICHI
(DFO-MPO)
39, rue Halifax St., Miramichi, N.-B. E1N 2E6

Le 25 janvier 2002

Bonjour,

Nous vous faisons parvenir ci-joint une description détaillée du mandat reçu du Ministère des Pêches et Océans Canada. Notre groupe est appelé à se pencher sur la situation des relations entre la communauté aborigène et des autres communautés de pêcheurs de la baie de Miramichi.

À titre de co-présidents, nous sollicitons votre contribution dans l'espoir que vous serez nombreux à répondre à notre invitation. Nous sommes convaincus que mieux nous serons renseignés meilleures seront nos chances de contribuer efficacement au revirement d'une situation difficile. Nous voulons insister sur l'importance de témoignages individuels et personnels en plus de ceux qui nous viendrons d'associations auxquelles vous pouvez appartenir.

Nous voulons nous assurer que toute personne ou association concernée pour la présente situation connaissent notre désir de les entendre et surtout de les écouter. Nous nous intéressons aussi bien aux rencontres individuelles que la présentation de mémoires. Votre choix sera le nôtre.

La date limite pour les présentations est le 6 mars 2002 étant donné que le rapport doit être soumis au ministre le 15 mars 2002.

Vous pouvez nous rejoindre à nos bureaux situés á l'Institut autochtone Redsky de Miramichi. Nos coordonnées sont:

Tél: (506) 773-4511
Téléc: (506) 773-4502
E: redsky@nbnet.nb.ca

Dans l'anticipation de vous accueillir bientôt, nous vous prions d'agréer nos plus sincères remerciements pour votre collaboration.

M. le juge Guy A. Richard
Co-présidents

Chef Roger J. Augustine (Ret)

GROUPE D'ÉTUDE SUR LES RELATIONS AVEC LES COLLECTIVITÉS DE LA BAIE MIRAMICHI

CONSIDÉRATIONS

Perspective globale, démarche autonome, axée sur les collectivités

- **Le Groupe offre l'occasion de jeter un regard élargi sur la situation de la pêche dans la région. Les enjeux dépassent la simple question d'accès à la pêche. Les stratégies traditionnelles de la gestion des pêches se sont avérées inadéquates dans les circonstances.**

- **Les différents entre les collectivités existent de longue date et le Groupe fournit une occasion d'explorer des solutions à long terme. Si la paix doit régner à nouveau, il faudra imaginer de nouvelles façons de faire.**

- **Le Groupe fournit l'occasion de réconcilier les différents et d'explorer les moyens susceptibles de promouvoir une réussite économique et sociale durable pour les collectivités. Les leaders et les membres des collectivités seront invités à articuler leurs doléances, chercher conjointement des solutions acceptables et à en assumer la responsabilité.**

- **Un Groupe indépendant saura mener une analyse politiquement neutre. De ce fait, ses recommandations devraient jouir d'une plus grande crédibilité auprès des collectivités intéressées et des gouvernements.**

MANDAT

- **Évaluer l'état des relations entre les collectivités des Premières Nations et les autres communautés de la Baie de Miramichi.**

- **Engager la discussion avec des citoyens, les membres de groupes organisés concernés ainsi que leurs chefs (représentants) dans le but de dégager une meilleure compréhension de la situation actuelle.**

- **Faire rapport au Ministère des Pêches et Océans sur la situation courante et suggérer des pistes de solutions pour les collectivités et les gouvernements pouvant inciter les Premières Nations et les autres communautés à amorcer une collaboration en vue d'atteindre des objectifs communs.**

LE GROUPE

- **Le Groupe aura une orientation communautaire et s'inspirera des points de vue exprimés par les membres des communautés de la Baie de Miramichi et leurs représentants.**

- **Le Groupe sera indépendant et son champs d'analyse pourra élargir, au besoin, sa consultation en dehors des questions reliées uniquement à la gestion des pêches.**

PORTÉE

- **Le Groupe tiendra des rencontres privées et publiques afin de recueillir les opinions des pêcheurs des Premières Nations et des autres collectivités et acceptera la présentation de mémoires selon les préférences des groupes intéressés.**

- **Le mandat du Groupe exclut toute modification aux droits des Premières Nations.**

APPENDIX 3

THE MIRAMICHI BAY COMMUNITY RELATIONS PANEL

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Caddy's Report : Lobster in Miramichi Bay. August 2001. "Conclusion on intensive Fall fishery"

Response to the Research Study by J. F. Caddy, Ph.D from Chief Dedam, Burnt Church First Nation, - Suggestions for a meaningful dialogue between equals DFO and the First Nation.

Gulf Region Map – First Nations, Jan 14, 2002

Profile of Burnt Church First Nation

Statistical Data on Lobster Licenses and Landings, 1998

Zone 23 Number of Class A Licenses

M.F.U. Press Release, August 24, 2001 – on The Caddy Report on the Lobster Resource in Miramichi Bay. One of his notable lines states that *"Even in the international arena, nations need to take part in co-management of shared stocks and cannot do this independently."*
"harmonization of fishing activities should not only be between Burnt Church and DFO but with adjacent fishing communities."
"This consultant is generally of the opinion that one fishing season should be decided on, since he is unaware of fisheries around the world that successfully regulate two open seasons in the year with the logistic complications this involves."

Dhaliwal's News Release, October 1, 1999, Update on fisheries affected by the Marshall Case court's decision.. "Two weeks ago, Sept. 17, the Supreme Court handed down its decision on the Marshall case. Its interpretation and assessment of what it means in practical terms has been the issue and the top priority in the Atlantic Canada. Focus on

putting in place a process that will allow us to accommodate the Treaty right." "We have clarified who are the beneficiaries of this Treaty right and today have initiated short-term and long-term strategy to manage this decision."

Dhaliwal's News Release, May 11, 2000, Update on fisheries affected by the Marshall Case court's decision.. "Burnt Church have tried using their own trap tags rather than DFO's. Tags are critical to controlling the fishery and conservating stock. Some parties want to develop and operate their own fisheries policy. We encourage fisheries co-management with 1st Nation, and it needs negotiation, rules and co-operation."

Dhaliwal's News Release, May 26, 2000, Update on fisheries affected by the Marshall Case court's decision.. "In the decision : The 1st Nation can take part in the commercial fishery; «The treaty right is a regulated right and can be contained by regulation within its proper limits» The Minister has the authority and the responsibility to regulate the Aboriginal commercial fishery." 17 licences authorized for Burnt Church; and it appears that some, though not all, parties at Burnt Church want to regulate and control the fishery, independently of the Government of Canada." Strict enforcement will prevail. Fishing must be authorized by licence and authorized tags must be affixed to traps, or will be seized.

Dhaliwal's News Release, August 04, 2000, Update on fisheries affected by the Marshall Case court's decision.. "Besides access to increased commercial fishery, food, social and ceremonial fisheries, the agreements can provide boats, gear, training and facility."

Dhaliwal's News Release, August 10, 2000, Update on fisheries affected by the Marshall Case court's decision.. "Burnt Church voted against the regulation of the fishery.- We have an obligation to regulate the fishery for conservation and orderly management to all Canadians."

Dhaliwal's News Release, August 15, 2000, Update on fisheries affected by the Marshall Case court's decision.. "Of the 34 1st Nations affected by the decision, 29 have signed agreements. Burnt Church 1st Nation have repeatedly rejected to negotiate or dialogue."

Dhaliwal's News Release, August 22, 2000, Update on fisheries affected by the Marshall Case court's decision.. "Meeting to agree on terms for a "cooling off period" but instead Burnt Church 1st Nation dramatically increased fishing from restricted zone"

Dhaliwal's News Release, August 29, 2000, Update on fisheries affected by the Marshall Case court's decision.. "Letter to Chief Dedam urging him to sit and negotiate arrangements. Refused to meet with Mr. MacKenzie. Dhaliwal met with Chief Dedam. Package-offer to the economy of Burnt Church residents but no arrangement reached."

Dhaliwal's News Release, August 31, 2000, Update on fisheries affected by the Marshall Case court's decision.. "The focus on the difficulties DFO have tring to work together with the Burnt Church Band. Band confirmed that they will not limit their unauthorized lobster fishery... goal is dialogue not confrontation..."

Dhaliwal's News Release, September 5, 2000, Update on fisheries affected by the Marshall Case court's decision.. "Impasse. Unwillingness to a cooling off period and to open further discussion in good will for possible reconciliation."

Dhaliwal's News Release, September 7, 2000, Update on fisheries affected by the Marshall Case court's decision.. "Almost one year since the Marshall decision… dialogue and negotiations not yet produced agreement… complicated by large-scale unauthorized fishing… meetings halted…Burnt Church demand for two mediators and developed a plan for a separate fishery in the fall … negative impact on the local abundance of lobster… needs to be an authority to balance and maintain a sustainable system for all users."

September 7, 2000,Transcription exclusively for DFO, in Winnipeg on other business – News Conference – Q & A directed at Herb Dhaliwal on the Burnt Church native fishing dispute. On the interview will be Dominique Benoit who was struck in the face with a rock during an enforcement operation on Aug. 22nd. Mr. Dhaliwal says he is committed to work with aboriginal communities to look at more fundamental changes in the fishery with more access to the fishery and the possibilities for new management regimes and a greater role for the 1st nations. No agreements reached yet. A mediator will be named. Would non- aboriginal fishers be treated any differently in a confrontation? It's in the interests of gov't to resolve these issues in a peaceful manner, so there's no difference. It will take time to develop co-management areas. Those are our long term issues to the benefit of all Canadians.

September 7, 2000, Transcription exclusively for DFO, in Winnipeg,– SCRUM Re: Aboriginal Fishery – Q & A directed at Herb Dhaliwal. Will the Burnt Church fishery issue reflect on other resource issues with the First Nation? The Gov't take its guiding rules from the Supreme Court under the Marshall case, whether if affects another resource, certainly as it says 'gathering, hunting and fishing in the Maritime region'. Hoping Burnt Church will go back to dialogue and not escalate the situation, we have to make sure that we have an orderly and regulated fishery with enforcement action if required.

Dhaliwal's News Release, September 11, 2000, Update on fisheries affected by the Marshall Case court's decision.. "In the current impasse, we have appointed Bob Rae, mediator in the Burnt Church First Nation and non-Native fishing levels… we are committed to a peaceful resolution."

Dhaliwal's News Release, September 19, 2000, Update on fisheries affected by the Marshall Case court's decision.. "disappointment from Burnt Church refusal to negotiate… will use whatever regulatory or enforcement tools to ensure continued viability and sustainability of the fishery."

Dhaliwal's News Release, September 21, 2000, Update on fisheries affected by the Marshall Case court's decision.. "Mediation process with Bob Rae was not successful…DFO still committed to finding solutions…Canadians want to see Treaty

rights respected, fishery resource protected, fairness to prevail in the fishery for all users.... Calling on all Canadians for calm, restraint, and real commitment to peace."

Dhaliwal's News Release, February 9, 2001, Update on fisheries affected by the Marshall Case court's decision.. "Multi-year agreements would give greater flexibility...more planning stability to non-native... expanded Aboriginal role in management... provide the Aboriginal with skills..."

Dhaliwal's News Release, April 3, 2001, Update on fisheries affected by the Marshall Case court's decision.. "Benefit opportunities from signing agreements... DFO position treaty rights..."

Dhaliwal's News Release, May 15, 2001, Update on fisheries affected by the Marshall Case court's decision.. "Negotiations on longer-term fisheries agreements; room co-management arrangements... but will not give up on regulating the fishery."

Dhaliwal's News Release, June 14, 2001, Update on fisheries affected by the Marshall Case court's decision.. "Make room for Aboriginal commercial fishers through non-Aboriginal voluntarily retiring their licences."

July 30, 2001, CBC Radio, Moncton, NB - Interview with Bob Allain, Regional Director DFO by Kate Letterick, reporter. On the issue of the Natives and DFO still not agreeing. There is a need to re-establish the working relationship, get some trust back into the process. With respect to Fall fishing we have to look at the sustainability and reproduction in this case. What are the management measures now?

Dhaliwal's News Release, August 1, 2001, Update on fisheries affected by the Marshall Case court's decision.. "Through agreements signed, First Nations getting the tools they need to participate and succeed in the commercial fishery."

August 2, 2001, Letter to H. Dahliwal, , from Richard Breault, Mayor of Néguac on how their community has been hurt by the buy back of 20% of their fishermen' licences and request how can DFO compensate for the lost of employment.

August 7, 2001, Letter to Jim Jones Regional Dir. Gen. Gulf Region, D.F.O. from Burnt Church First Nation,. Total rejection of Coonditional Proposal of Aug. 2. as this falls short of the objectives in our management plan reducing from 5,600 traps to 580 tags and restricting the fishing to a small area.

August 19, 2001, Letter to Chief & Council Burnt Church,– Proposing a meeting to respond to the rejection of the conditional proposal for a more comprehensive arrangement.

August 20, 2001, Transcription exclusively for DFO, at the Wosk Center for Dialogue, Vancouver, BC– News Conference – Q & A directed at Herb Dhaliwal on the present situation in the Burnt Church and Marshall's decision...the Communal licence issued...

and how each treaties are treated differently. The Douglas Treaty and the Mi'kmaq, Maliseet treaty of 1762 are two different treaties.

Dhaliwal, Statement, August 20, 2001, Update on fisheries affected by the Marshall Case court's decision.. "On-site to hear dialogue and move forward together."

August 23, 2001, Letter to Chief & Council Burnt Church,– Attached a revised Conditional Proposal for their consideration . From P. S. Chamut, Deputy Min. D.F.O.

Dhaliwal, Press Release, August 20, 2001 – Compare to one year ago, we have ongoing dialogue and discussions with Burnt Church, MFU and discovered common ground. We can make adjustments to the regime, but conservation demands that it be a single regime.

August 27, 2001 – Letter to Chief and Council Burnt Church from J. B. Jones Regional, Gulf, DFO issuing an Aboriginal communal Fishing Licence to fish lobster for food, social and ceremonial purposes from Aug. 28 to Oct. 20, 2001 within a defined zone. Attached license and definitions.

Dhaliwal, Press Release, August 27, 2001 – Disappointment in the withdrawal from any dialogue from Burnt Church First Nation. New communal license issued to a restrictive zone.

Dhaliwal's News Release, August 27, 2001, Update on fisheries affected by the Marshall Case court's decision.. "Through dialogue and discussion with Chief and various members of Burnt Chruch…common ground and peaceful solutions for the long term peaceful fishery.

August 28, 2001, Transcription exclusively for DFO, at the Gulf Fisheries Center, Moncton,– Press Briefing – RE: Communal License issued by DFO to the Burnt Church Reserve, given by: Bob Alain, Jim Jones, Mike Chadwick.

Dhaliwal's News Release, September 17, 2001, Update on fisheries affected by the Marshall Case court's decision.. "Progress made peacefully. Calling all sides to follow the rule of law and D.F.O will provide any support to the RCMP to resolve this situation."

Dhaliwal's News Release, October 23, 2001, Update on fisheries affected by the Marshall Case court's decision.. "Fall 2001 Fishery Season expired Midnight Oct. 20th with positive results for all."

November 2, 2001 – Letter to Chief and Council Burnt Church from Chamut, DFO requesting to resume the dialogue on fisheries issues and areas of common interests.

Telegraph Journal, Nov. 10, 2001 -. Affidavits accuse Burnt Church chief of vote irregularities. Allegagations include incidents of vote-buying and tampering with mail-in ballots.

November 28, 2001 – Letter to P. s. Chamut Assist. Deputy Min. DFO from Chief W. Dedam, Burnt Church 1st Nation. Accepting invitation to resume discussions in December.

Dhaliwal's News Release, Jan. 11, 2002, establishing a Community Relations Panel for Miramichi Bay,.

Organizational Chart (First Nation) for Burnt Church, NB

Burnt Church Cultural Resource Center Proposal – Mission - To establish a dialogue within the Burnt Church community and Government to seek solutions on how to ensure a safe resolution for all parties involved in the Burnt Church situation.

DFO, September 2001 – No. 14 Bulletin – *OCEANS EXTRA*. A Marshall Update for DFO Employees

Final Report. Canadian Attitudes Toward the Marshall Decision, July 2001 . Prepared for the Communications Branch Fisheries and Oceans Canada by Environics Research Group. 84 pages

Presentation to the Standing Committee of F&O March 22, 2001 - Conservation and Protection Program – Outline: Introduction to Conservation & Protection; Program Components; Regional Profiles; C & P Renewal; Program Future.